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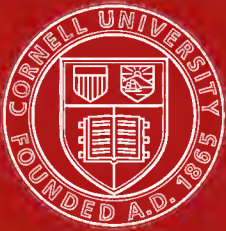
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THE
CLERKS' AND CONVEYANCERS'
ASSISTANT.

A COLLECTION OF FORMS OF
CONVEYANCING, CONTRACTS,
AND
LEGAL PROCEEDINGS,

FOR THE USE OF
*THE LEGAL PROFESSION, BUSINESS MEN, AND PUBLIC
OFFICERS IN THE UNITED STATES.*

WITH
Copious Instructions, Explanations, and Authorities.

Aug 22
BY
BENJ. V. ABBOTT AND AUSTIN ABBOTT.

THIRD EDITION,
REVISED AND ENLARGED
BY CLARENCE F. BIRDSEYE,
OF THE NEW YORK BAR.

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1911.

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THE
CLERKS' AND CONVEYANCERS'
ASSISTANT.

PREFACE TO THIRD EDITION.

THE scope of this book has been much enlarged in the present edition. About one hundred and fifty forms have been omitted as unnecessary and obsolete—largely under the titles of Pensions and Pre-Emptions and Homesteads. About four hundred and fifty new forms have been added, chiefly under the chapters upon Chattel Mortgages, Contracts, Deeds, Leases and Mortgages. There has also been added a very full digest of the statutes of the several states and dependencies relating to chattel mortgages, conditional sales, deeds and real property, leases, mortgages and wills. This statement of the law has added several hundred pages to the volume and made it not only a compilation of forms but also, it is believed, the most complete compilation extant of some of the most important branches of the statute law, with a statement of the exact places where that law may be found in the latest official compilations of the statutes of the several States and dependencies.

The forms which have been added have been taken from those in actual and ordinary use in actual and important transactions. For instance, there have been given the deed of trust under which the controlling stock of the Equitable Life Assurance Society was deposited after its acquisition by Thomas F. Ryan from James H. Hyde (form 720); the form of proxy officially used by the United States Steel Corporation (form 1520); the patent lease and license of the United Shoe Machinery Company (form 723), and many other forms of equal importance. No merely academic forms drawn for use in such a work as this, and without the assistance of clients and the criticisms of opposing counsel, can be as valuable as forms taken from actual practice.

Such a very voluminous work is largely valueless without a complete index which shall directly point the reader to its important features. With this in mind the index has been enlarged to cover all the new forms added so that the reader can easily get at, not only the form itself, but also its important provisions. In its present shape this volume contains at least twice as much printed matter as any other similar work.

CLARENCE F. BIRDSEYE.

NEW YORK CITY, *March*, 1911.

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CLERKS' AND CONVEYANCER'S ASSISTANT.

A Collection of Forms of Conveyancing, Contracts, Etc.

THIRD EDITION.

CHAPTER I.

ABSTRACTS OF TITLE.

The customs in relation to abstracts of title have materially changed since the wide introduction of title companies and title insurance companies. An abstract of title is a document presenting in a connected form the substance of the various instruments affecting the ownership of real property and especially the "chain of title" or the instruments through which the title is to be traced back. It is the appropriate means of laying before one who contemplates buying the property the history of the title which the seller proposes to convey. In the early times in England the purchaser was presumed to receive from the attorney or conveyancer in charge of his interests an abstract of the title and also the original earlier deeds through which his title was derived. Therefore, in England abstracts have an importance in conveyancing which they have never acquired in the United States. There are well settled rules governing the duties of parties to real estate transactions relative to the preparation and verification of the abstracts and the art of preparing these documents is far advanced and has been the subject of several important legal works.¹

In the United States the statutes requiring that all deeds and mortgages, etc., must be recorded in order to give notice to subsequent purchasers and others have taken away the relative importance of abstracts of title. Nevertheless it has been the custom in the United States for the conveyancer to prepare and give to his client, the purchaser, an abstract bringing the title

¹ It appears there to be considered as implied in ordinary contracts for the sale of real property, that the seller will, before the time fixed for the completion of the contract, furnish to the buyer evidence of the sufficiency of the title he proposes to convey. See Gardner's (William) Directions for Drawing Abstracts of Title: Lond., 1840. Harper's (S.) Practical Hints: Lond., 1829. Lee's (J. Y.) Treatise on the Evidence of Abstracts of Title to Real Property: Lond., 1843. Moore's (Henry) Instructions for Preparing Abstracts of Titles: Lond., 2 ed., Republished in Philadelphia Law Library, 1853. Preston's (Richard) Essay on Abstracts of Title, 2d ed.: Lond., 1824; New York, 1828, 3 small vols., 8vo.

He must cause an abstract to be prepared and furnished to the buyer, giving him an opportunity to verify it by comparison with any original deeds in the seller's possession or otherwise, as circumstances may admit; and until this is

done, the buyer is not bound to accept a deed, or pay purchase-money. Upon the buyer, however, devolves the labor or expense of verifying the statement furnished; of ascertaining that it correctly states the original deeds, etc., and determining that the title proffered is one which he is satisfied to accept.

In the United States, many circumstances—such as the comparative youthfulness, so to speak, of our land titles, the very general extension and completeness of systems of recording deeds, the moderate values of landed property, and the characteristic inclination of our people for sales and exchanges,—have prevented any such necessity for these abstracts as has arisen in English practice. For American works on this subject, see Curwen's (Maskell E.) Manual upon the Searching of Records and the Preparation of Abstracts of Title to Real Property: Cincinnati: Clarke & Co., 1865. Tuttle, Farm Titles in N. Y. City, 3 v., 1877-81;

down to the date of the purchase, and this abstract has been used by subsequent purchasers to bring their title down to date. A copy of this abstract has usually been kept by the conveyancer for his own future use and guidance. The earlier form of abstract is given in form No. 2 hereafter, but the business done by title companies has become so much larger and more important than that of the ordinary attorney that it is proper to speak first of the newer form of abstract. This is usually brought down upon uniform sheets of paper about 9½ to 10½ by 5½ inches. Sheets devoted to different kinds of instruments are distinguished by different colors of paper. For example, the cover and all deeds will be upon white paper, mortgages upon yellow paper, wills upon pink paper, references to actions upon green, covenants upon red and incorporations upon blue. The best forms provide for plenty of blank sheets corresponding in color to the various main sheets on which to enter any information under this subdivision which cannot be put upon the first sheet. These sheets, ruled lengthwise upon the length of the sheet, are uniformly punched upon the left-hand side, so that they can be easily bound together when made up. After the first page comes a blank sheet upon which are to be written the various objections to the title or other matters which should be brought at once to the attention of the conveyancer. This is succeeded by a sheet of cross section quadrille paper, which is well adapted for making maps. The forms of the several sheets are as follows:

| | |
|--|------|
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1. New Form of Abstract of Title.

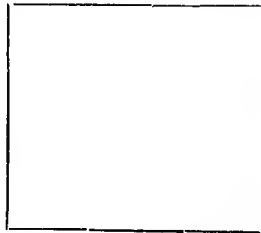
I.

ABSTRACT OF THE TITLE

No.....

OF

.....
*to premises known as No..... in the Borough
of..... in the City of New York, situated as shown on
following diagram:*



Section.....

Block.....

Lot.....

-Comyns, abstracts, 1895; Gover, London, 1879; Martindale, St. Louis, 1890; War-
relle, Chicago, 1883; Gerard, N. Y., 1909.

In places where land values are relatively important, or where titles have become complicated, they are used; but we believe their use is regulated rather by convenience and courtesy of parties than by any distinct recognition of the English rules above stated as a part of the American law of conveyancing. The system, so universal in America, of recording deeds, whereby public notice is given of almost all transfers of real property, has tended strongly to diminish the

necessity for the use of abstracts. And we understand the American rule to be, that where the memorandum of the contract of sale contains no provisions expressly requiring the seller to furnish one, he is not bound to do so; but the contract is satisfied on his part by the tender of a competent deed, on the contract day, if the title of the seller is actually perfect. To relieve from payment of the price, the buyer should show some defect in the title, and not merely that the chain of conveyances was not made known to him.

| | | IV. | | |
|----------|---------|-----|-------------|-------|
| | | | DEED, | Sec. |
| | | | Dated | Block |
| | | To | Ack'd | |
| | | | Rec'd | |
| | | | Liber | |
| | | | Cons., \$ | |
| Rev. St. | Conveys | | Request | |
| \$ | | | Subjt. | |
| Canceled | | | | |
| | | | Hab. in fee | |
| | | | Covts. | |

| | | V. | | |
|----------|-----------------------------------|----|------------|--------------|
| | | | MORTGAGE | |
| | | | Dated | Sec. |
| | | To | Ack'd | |
| | | | Rec'd | Block |
| | | | Request of | |
| | | | Liber P. | |
| Rev. St. | TO SECURE \$ due . Interest from— | | | day Int. Cl. |
| \$ | at % payable | | | day Tax Cl. |
| Canceled | COVERS | | | Ins. Cl. |
| | | | | Rec. Cl. |
| | | | | Ex. Tax Cl. |

IX. Blank sheet.

X.

COVENANTS AND RESTRICTIONS AND PARTY WALL AGREEMENTS.

Contained in _____ Recorded in L _____ c. p. _____ § _____

XI.

INCORPORATION OF

Incorporated under the provisions of Chapter _____ Laws of _____ as amended

*Certificate of incorporation duly approved, filed in the office of the Clerk of the County of _____, on the _____ day of _____ .
Same filed in the office of the Secretary of State, at Albany, on the _____ day of _____ .*

*Special charter granted by the Legislature, Chapter _____ Laws 1
Organization tax paid on the _____ day of _____*

*The following is an abstract of the certificate of incorporation,
(insert yellow sheets).*

The older form of abstract of title proceeds upon a somewhat different plan.

Time of Commencing.—When an abstract is to be prepared, a preliminary question is, at what date the search shall commence. Upon theory, the chain of conveyances should be traced back to some date anterior to the time from which adverse possession is, by force of the statute of limitations, equivalent to a perfect title. But in applying this rule, a large allowance is evidently necessary for the exceptions which the statute makes in favor of infants, lunatics, married women, and other persons under a disability to sue. In England, where the limits of the statute are fixed at forty years, the practice requires that titles should be traced back for sixty years; and this rule may be considered as desirable in the older states of our Union, except so far as variations in the time prescribed for adverse possession to quiet the title, may modify it. In the western states generally, and wherever lands have been settled under grants from the federal government, an abstract is sufficient which traces the title back to the patent granted by the United States. But it is very frequently the case that a client is satisfied to take the title of some owner for granted, knowing that it has been pronounced good in the courts, or bears an unquestioned reputation, and instructs the conveyancer to commence his search at the conveyance by that owner. Where this is intended, the abstract should state in the caption the instruction given, in order that the conveyancer may appear to take no responsibility for the anterior period.

Facts not Matter of Record.—There are many facts affecting title to lands which are not necessarily evidenced by any documents or records subject to the conveyancer's inspection. Hence an abstract may be full—that is, may state every important portion of all instruments involved, and may exhibit a good title—and yet there may exist facts which create a defect. Marriage may have created an undisclosed right of dower; alienage a liability to escheat; or death have caused the land to descend; yet nothing appear upon the record to indicate the fact. So it may be that the seller is kept out of possession by an adverse claimant; in which case, in several of the states, he is, by statute, forbidden to convey.¹ And there are other similar cases. No absolute duty rests upon the conveyancer to elicit facts of this description. He should make such inquiry as the record suggests and the circumstances admit. When inquiry is made as to some fact of this description, it is usual and convenient to annex to the abstract the affidavit of the informant upon the matter in question.

Order and Arrangement.—The object of the counsel in preparing an abstract is to present a statement of every fact, and an epitome of every deed, will, or other document or record, upon which the validity of the title depends; which, while free from all unnecessary details, shall answer all reasonable inquiries, and shall be sufficiently methodical and lucid in its order and arrangement, to enable a qualified person to form his opinion upon the chain of title as he proceeds from point to point in reading. It is obviously impossible to give forms which can be followed as guides, so much depends on the circumstances of the individual case; but the outline of an abstract presented below illustrates the method employed.

At the outset occurs a caption, which states the name of the person whose title is presented, and describes the property which is the subject of examination. It is convenient to accompany this description with a map or diagram of the lot, and of any surrounding landmarks referred to throughout the paper. Then follow the various deeds, wills, etc., through which the title is deduced; and these, if the chain is sufficiently simple, are best arranged in chronological order. Where, however, one portion of the property is derived from one source, and another portion from another, it is convenient to trace the title to one portion down to a point where both are found to belong to one owner, then

¹ See, in New York, Penal Law, § 2032. Birdseye, C. & G. Cons. Laws, p. 4077.

to go back and trace the title of the residue down to the same point, and then, from that time, to trace the title of the whole, down to the date of inquiry. The various documents abstracted should be numbered in their order, to assist reference. At the end of the list of transfers, is placed such certificate as the counsel thinks it expedient to give, as to the completeness of the title. And to the whole are appended such official searches, and other paper proofs that the land is free from other incumbrances and liens, as the nature of the case requires.

2. General Form of Abstract of Title.

Abstract of the Title

of

X. Y. Z.

To premises fronting upon Fifty-first street, in the city of New York, and described as follows:

Beginning at a point on the southerly side of Fifty-first street, distant one hundred and fifty feet east of the easterly side of the Third avenue; running thence easterly along Fifty-first street fifty feet; thence southerly and parallel with said avenue, one hundred feet and five inches to the centre line of the block; thence westerly and parallel with Fifty-first street, fifty feet; thence northerly and parallel with Third avenue, one hundred feet five inches to the place of beginning.

This parcel of land comprises two city lots, both of which were many years ago embraced in what is known as the Old Elm farm, which was conveyed, some time prior to 1836, to Messrs. A. B. and C. D. I am instructed to assume their title as good at the date of the conveyance first mentioned below. The title to the two lots continues united until 1844, when they were separately conveyed, as appears by the deeds marked VII and XI respectively.

By the deeds marked X and XIII they were subsequently both vested in Q. R., from whom the title of Mr. X. Y. Z. is deduced.

I.

A. B., and C. D., and E. D., his wife,
to
E. F.

Deed dated 30th June, 1836. Ackd.¹ July 1st, 1836. Recorded July 9th, 1836, in Liber 356 of Convs., p. 529. Consid., \$7,600.

Conveys all that piece or parcel of land, known as the Elm farm, situated upon both sides of the Third avenue, in the city of New York, and bounded on the east by the road called the Old Boston Post-road; on the south, by lands formerly owned by H. K., deceased; on the west, by lands belonging to the corporation of the city of New York, usually called the Common; and on the north, in part by land owned by S. B., and in part by land owned by B. B., containing acres, more or less.

Warranty against grantors and persons claiming under them.

Deed duly acknowledged. Wife separately examined.

It appears, by an affidavit of K. D., in the possession of J. L. M., attorney-at-law, a copy of which is annexed to this abstract, that A. B. was never married.

¹ As to forms of acknowledgments, separate examination of married women, etc., see chapter on "ACKNOWLEDGMENT AND PROOF OF DEEDS," *post*.

II.

E. F.
with
G. H. and K. L.

Agreement for sale of premises, dated July 5th, 1840. Recorded in Liber 371 of Convs., p. 153. Consid., \$17,000.

Agrees to convey same premises, employing same description.

E. F. died August 3d, 1840, leaving nine children — viz., Mary Jane, wife of I. J., Eliza Ann, John, Henrietta, Caroline Matilda, Emily, William, Thomas, and Charlotte Amelia; all minors, except Mary Jane.

I. J. was, on March 7th, 1841, appointed guardian of eight infant or minor children of E. F.

On March 23d, 1841, the court of chancery ordered the said minors, by their guardian, to convey the said premises to G. H. and K. L., pursuant to agreement.

III.

Eliza Ann, John, Henrietta, Caroline Matilda, Emily, William, Thomas and Charlotte Amelia F., by I. J., their guardian,
to
G. H. and K. L.

Deed dated 14th July, 1841. Ackd. July 15th, 1841. Recorded July 29th, 1841, in Liber 420 of Convs., p. 221.

Recites agreement of July 5, 1840 (No. II, above), death of E. F., appointment of I. J. as guardian, and order of court of chancery above mentioned, and in consideration of premises conveys eight undivided ninths of Elm farm, by same description as in No. I.

No covenants.

IV.

I. J., and Mary Jane, his wife,
to
G. H. and K. L.

Deed dated July 26th, 1841. Ackd. July 27th, 1841. Recorded July 29th, 1841, in Liber 420 of Convs., p. 225.

Conveys one undivided ninth of Elm farm, by same description as in No. I; and with same recitals.

No covenants.

Messrs. G. H. & K. L. caused to be prepared and filed in the register's office a map of this tract, according to a survey by Daniel Ewen, city surveyor. It is in a tin case, and numbered 126. The premises in question are designated upon this map as lots 22 and 23.

V.

Will
of
K. L.

Dated February 25, 1842. Proved October 20, 1842. Recorded in Liber 90 of Wills, p. 307.

Devises all the real property of the testator, mentioning, among other lands, one undivided half interest in the lands known as the Old Elm farm, and more lately surveyed and laid out in lots by Daniel Ewen, city surveyor, unto A. L. and B. K., his executors, in trust to sell the same, and with the proceeds to defray certain debts and legacies.

It appears, by recitals in a codicil to this will, that Annette, wife of K. L., died a year or two previous to himself.

VI.

| |
|---|
| G. H., and Mary, his wife, and A. L. and B. K., executors of K. L., to M. N. |
|---|

Deed dated April 18, 1843. Ackd.
April 20, 1843. Recorded April 27, 1843,
in Liber 447 of Convs., p. 265. Consid.,
\$2,000.

Conveys four lots, distinguished on a map made by Daniel Ewen, city surveyor, of four hundred lots, formerly composing Elm farm, and owned by G. H. and K. L., as Nos. 20, 21, 22, and 23, bounded as follows: Commencing at a point on the southerly side of Fifty-first street, distant one hundred feet east of the easterly side of the Third avenue; running thence southerly along the rears of lots numbered 19, 18, 17, 16, and 15, on said map, one hundred feet five inches to the center line of the block; thence easterly and parallel with Fifty-first street, one hundred feet; thence northerly and parallel with Third avenue, one hundred feet and five inches to the southerly side of Fifty-first street; thence westerly along the southerly side of Fifty-first street, one hundred feet to the place of beginning.

Covenants against grantors' acts.

Wife separately examined.

From this point, the titles to the two lots composing the premises in question were for a time held separately. I proceed first with the title to the westerly lot, No. 22.

VII.

| |
|---|
| M. N., and E. J. N., his wife, to O. P. |
|---|

Deed dated June 9, 1844. Ackd.
June 9, 1844. Recorded June 10, 1844,
in Liber 459 of Convs., p. 26. Consid.,
\$900.

Conveys all that lot, piece, or parcel of land in the ward of the city of New York, distinguished on a map made by Daniel Ewen, city surveyor, of four hundred lots of land in the city of New York, owned by G. H. and K. L., as No. 22, and bounded as follows: On the north by the southerly side of Fifty-first street; on the west, by the rears of lots numbered 19, 18, 17, 16, and 15, on the said map; on the south, by the centre line of the block; and on the east, by lot numbered 23 on the map; containing in breadth in front and rear twenty-five feet, and in length on last side one hundred feet five inches, be the same more or less.

Full covenants. Wife separately examined.

VIII.

| |
|----------------------|
| O. P. to M. N. |
|----------------------|

Mortgage dated June 9, 1844. Ackd.
June 9, 1844. Recorded June 10, 1844,
in Liber 80 of Mortgs., p. 209.

To secure \$500 of the purchase money in the last-mentioned deed. Mortgages the lot conveyed by the last-mentioned deed, employing same description.

In chancery, before the vice-chancellor. Afterwards, supreme court of the state of New York.

IX.

| | | |
|--|---|--------------|
| <p style="text-align: center;">M. N. against O. P. and Mary, his wife, G. C., T. J. O., D. R., and the F. and J. Railroad Company.</p> | } | Foreclosure. |
|--|---|--------------|

1845, Aug. 6.—Bill filed to foreclose mortgage last mentioned; Nov. 8, answer of defendant, G. C.; Nov. 28, answer of O. P. and wife; Dec. 29, replication filed.

Notice of hearing for third Monday of July, 1846, and proof of service on attorneys who have appeared.

Order to close proofs, March 4, 1846, and proof of service.

1846, July 17.—Decree of sale to be made by one of the masters in chancery.

1850, Nov. 11.—Judgment of general term, supreme court, affirming decree of sale, and directing sale to be made by A. F. N., as referee.

1850, March 26.—Order taking bill as confessed as against T. J. O., D. R., and the F. and J. R. R. Co., made and filed as of 1st July, 1846.

Report of sale contains sales map referring to the Ewen map already mentioned, on which the premises to be sold are designated as lot No. 22.

X.

| | | |
|--|---|--|
| <p style="text-align: center;">A. F. N., Referee, to Q. R.</p> | } | Deed dated March 20th, 1850. Ackd. March 21st, 1850. Recorded May 25th, 1850, in Liber 506 of Convs., p. 21. |
|--|---|--|

Recites decree of 1846 and order of 1850, and conveys lot No. 22, as described in the conveyance marked VII, above.

I now return to trace the title to the easterly lot No. 23, from the conveyance to M. N., numbered VI, above.

XI.

| | | |
|--|---|--|
| <p style="text-align: center;">M. N., and E. J. N., his wife, to S. T.</p> | } | Deed dated June 20, 1844. Ackd. June 22, 1844. Recorded June 26, 1844, in Liber 459 of Convs., p. 275. Consid., \$925. |
|--|---|--|

Conveys all that lot, piece, or parcel of land in the ward of the city of New York, distinguished on a map made by Daniel Ewen, city surveyor, of four hundred lots of land, in the city of New York, owned by G. H. and K. L., as No. 23, and bounded as follows: On the north, by the southerly side of Fifty-first street; on the west, by lot numbered 22 on said map; on the south, by the centre line of the block; and on the east, by lot numbered 24 on said map, containing in breadth in front and rear twenty-five feet, and in length on each side one hundred feet five inches, be the same more or less.

Full covenants. Wife separately examined.

It appears that S. T. died intestate prior to February 1, 1853, leaving his sons, James, Henry, and William, his heirs-at-law. I am reliably informed that neither of the sons was married at the date of the next-mentioned deed.

XII.

Ellen T., widow of S. T., deceased,
and James T., Henry T., and Wil-
liam T., heirs-at-law of S. T.,
to
U. V.

Deed dated Feb. 1, 1853. Ackd. Feb.
5, 1853. Recorded April 29, 1853, in
Liber 530 of Convs., p. 451. Consid., \$1.

Recites the deed of last above mentioned, numbered XI, and the death of S. T., leaving the parties of the first part, his widow and heirs-at-law, and conveys the same lot as is described in the deed numbered XI, above, together with the buildings thereon.

Habendum in trust to sell and convey the same as soon as an advantageous price can be obtained, and invest the proceeds in dividend-paying stocks, for the benefit of Mrs. Ellen T., for her life, with remainder to the three sons.

Mrs. T. is made a party for the purpose of relinquishing her right of dower.

XIII.

U. V.
to
Q. R.

Deed dated August 16, 1854. Ackd.
August 16, 1854. Recorded Sept. 1,
1854, in Liber 540 of Convs., p. 307.
Consid., \$8,000.

Recites last-mentioned deed, and conveys same premises by same description. Habendum in fee.

Covenants against grantors' acts only.

A mortgage for \$5,000, part of the purchase money, recorded in Liber 159 of Mortgages, p. 200, has been discharged of record.

From this point, both lots will be considered together.

Q. R. appears to have been an alien; but any right in these lots which would have arisen to the people of the state, by escheat, was released to his son, by the following act:

XIV.

An Act to release the interest of the
people of this state in certain
lands in the city of New York,
conveyed by A. F. N. and U. V. to
Q. R., and which escheated, on his
death, to his son, James Henry R.

Passed June 4, 1855, by a two-thirds
vote. Session Laws, ch. 210, p. 360.

Enacts that all the right, title, interest, and estate of the people of this state, acquired by escheat, upon the death of Q. R., late of the city of New York, in and to the premises described in the heading to this abstract, are released to his son, James Henry R.

I find no evidence of the alienage, marriage, or death of Q. R., except such inference as may be drawn from the above act. But assuming those facts to be true, it is evidently possible that his widow may be still living.

Inasmuch as, by Laws of 1845, ch. 115, the wife of an alien is declared entitled to dower, and as the releasing act above mentioned purports to convey only the interest of the people, I am of opinion that the wife of Q. R., if she

survived him, was dowable in these lands. It cannot well be contended that the act of release above mentioned, though later in date, overrides the provisions of the act of 1845. I find no release or transfer of this right.¹

XV.

| | |
|--|---|
| James Henry R., and Mary Julia, his wife, to V. W. | } Deed dated April 14, 1861. Ackd. April 15, 1861. Recorded April 17, 1861, in Liber 610 of Convs., p. 426. Consid. \$12,000. |
|--|---|

Conveys the premises in question, with the buildings thereon, by the description employed at the head of this abstract.

Habendum in fee-simple.

Full covenants.

Wife separately examined.

XVI.

| | |
|--|--|
| V. W. to James Henry R., and Mary Julia, his wife. | } Mortgage dated April 14, 1861. Ackd. April 15, 1861. Recorded April 18, 1861, in Liber 360 of Mortgs., p. 212. |
|--|--|

To secure \$9,000 of the purchase money mentioned in the conveyance last above specified. Mortgages the premises in question, and buildings thereon. Contains the usual interest and insurance clauses. Bond for payment of principal in five years from date, with interest semi-annually.

XVII.

| | |
|--|---|
| V. W., and Jane, his wife, to X. Y. Z. | } Deed dated June 20, 1865. Ackd. June 20, 1865. Recorded June 20, 1865, in Liber 680 of Convs., p. 310. Consid. \$5,000. |
|--|---|

Conveys the premises in question, with the buildings thereon, by the description employed in the heading to this abstract.

Habendum in fee, but subject to the mortgage last above mentioned, which grantee assumes to pay.

Covenants of seizure; of power to convey; for quiet possession; against incumbrances, except said mortgage; for further assurance; and for warranty.

From an examination of the transfers above mentioned, and the affidavit and searches annexed, I am of opinion that X. Y. Z. is seized of a good estate, in fee-simple, in the premises in question, subject only to a right of dower in Mrs. Q. R., if living, and to the mortgage above mentioned, marked XVI.

[Date.]

[Signature of counsel.]

[Here may follow any affidavit or exhibit referred to in the abstract, and the official certificates of the register of deeds, county clerk, and other proper officers, showing the premises free from incumbrances, taxes, etc., except as disclosed in the abstract. For forms of requisitions for these certificates, see chapter on "Searches."]

¹ *Aliens*.—No general rule can be stated as to the rights of aliens to take and hold real property in the United States, although there is a marked tendency to liberality in the tenor and application of the laws bearing on the subject. It is advisable to consult the state statutes of the date of the transfer. As to present law in New York, see Birdseye, C. & G. Cons. Laws, pp. 4921-4928.

CHAPTER II.

ACKNOWLEDGMENT AND PROOF OF DEEDS.

A DEED is said to be acknowledged, when the person executing it comes before a public officer who is authorized for the purpose, and admits to him that it is a genuine instrument, and voluntarily made, and the officer certifies the fact in proper form upon the deed.

A deed is said to be proved, when a witness comes before the officer and testifies to its genuineness, and the officer certifies thereto in the same way.

These officers are usually justices of the peace, commissioners of deeds, notaries public, and judges or clerks of courts.

The certificate of the officer is commonly designated the acknowledgment, or the proof.

The mode and the effect of thus authenticating a deed of lands is governed by the law of the state or territory where the lands lie, not by that of the place where the parties may be when it is executed. For obvious reasons of convenience, however, it has been enacted in the statutes of most of the states, that a deed of lands therein, executed without the state, and either within or without the United States, may be executed or acknowledged, or both, pursuant to the law of the place of its execution, with like effect as if it were done according to the law of the place of the property.

Where a deed is executed and acknowledged without the state, in pursuance of such a statute, there must be entire conformity with the one law or the other, both as to the officer and as to the contents of the certificate. The laws of both states cannot be invoked to sustain an acknowledgment manifestly defective when tested by either.

General Principles.—The following remarks will illustrate the general principles of American law upon this topic. It will be observed that these principles are subject, however, to numerous local exceptions, which, so far as they relate to the form of proceeding, are noticed at the head of the forms given for each state.

In general, the function of acknowledgment or proof is twofold—to entitle the deed to be recorded, and to entitle it to be read in evidence in courts of justice, without further proof of its authenticity. The act is not essential to the bare validity of a deed, although it is almost indispensable to the security of a purchaser. In a few of the states, acknowledgment and record are necessary to pass title, even as against the grantor. Formerly, the laws of most of the states provided that a wife's deed was not valid unless upon a private examination, made separate from her husband, she acknowledged that she executed the deed without fear or compulsion. This law has been changed in many of the states, especially at the West.

Where a deed is executed by an attorney in fact, the more common practice is to have the power of attorney acknowledged or proved as the act of the principal, and to have the deed acknowledged or proved as the act of the attorney, and to have both recorded.

In a great many of the states it is the rule that proof, by the oath of one or more subscribing witnesses (except as to a married woman's execution of a deed under the laws of those states which require her to be personally and separately examined), is equivalent to an acknowledgment by the grantor in person. In a number of the states, however, no provision is made for proof by witnesses, except in case an acknowledgment cannot be procured.

In most of the states it is the rule, that a deed executed by several grantors should be acknowledged by or proved as to each one of them. An acknowledgment by one of them may suffice to get the deed on record, but the omission of any acknowledgment by the others may raise doubts on the part of subsequent purchasers. It is, however, only those who convey or release some interest in the land who need unite in the acknowledgment. A grantee who executes the deed merely to bind himself by personal covenants, need not do so.

Officers authorized to take acknowledgment or proof, are generally limited in the exercise of such authority to the place or district for which they are appointed; judges, courts and clerks of courts being limited to the territorial jurisdiction of their tribunal.

The Forms.—Although as a general rule it is enough if the certificate shows a substantial compliance with the statute, and formal and verbal departures from the form and words of the statute are not regarded as fatal, yet language of the same force and import must be used; and it is best to follow the words of the act so far as they can serve as a guide, and for the rest to pursue the methods of establishing precedents.

Care is necessary on the part of the officer as to the form of the certificate which he signs, whether it be drawn by him or drawn by a party or attorney; as he may, perhaps, be chargeable with damages resulting from the use of an insufficient certificate. A mistake in the certificate may be corrected by the officer who made it, at any time afterward during his term of office; except that where the statute makes the validity of the instrument depend upon the record, he cannot amend his certificate after the deed has been recorded.

In the following pages are given, under the names of the several states and territories of the Union, forms for all ordinary cases, framed in this way, agreeably to the laws and the practice of their respective jurisdictions. As the laws of New York on this subject have been copied in several other states, and the practice there is well settled, we give among the forms for that state a large number adapted to peculiar cases, which will be found serviceable guides in framing certificates for similar cases in other states generally.

In respect to the use of the forms, it is the better practice in all cases to write the certificate upon the same paper on which the instrument is written; although in some states the law or settled practice sanction a certificate upon a separate paper, firmly annexed. Any material erasures or interlineations in a conveyance should be noted previous to the execution, above the place where the witnesses are to sign; and if not so noted, should be mentioned in the officer's certificate of proof or acknowledgment. The signature of the officer should be followed by his official designation or title. When the proof or acknowledgment of an instrument is taken in one state or territory to be used in another, the venue of the certificate should designate that in which the proof or acknowledgment is taken; and the body of the certificate should, according to the general usage, give the official title of the officer at full length; and his signature, with his official seal, should be accompanied by his official title.

In the following pages, the law of acknowledgment in each state is treated under five different heads:

I. Whether or not a seal or scroll is necessary.

II. The law as to witnesses.

III. The statute as to whether a husband or wife must join in the deed, or whether a separate examination of the wife is necessary.

IV. The officers before whom acknowledgments may be taken (a) within the state, (b) without the state and within the United States, and (c) without the United States.

V. The form of the acknowledgments. Where such form is prescribed by law, the statutory form is given; otherwise the form in common use in that jurisdiction.

In accordance with the endeavor which has been made to bring about uniformity of legislation within the several states of the Union, a uniform system of acknowledging and proving instruments relating to real property has been adopted by the following states: Iowa, Code Supplement 1907, §§ 2943, 2943a; Massachusetts, Revised Laws 1902, ch. 127, §§ 18-22; Michigan, Compiled Laws 1897, §§ 9018-9022; Minnesota, Revised Laws 1905, § 2684; Missouri, Annotated Statutes 1906, § 913; New Mexico, Laws 1907, ch. 37, § 17. Several other states have adopted forms substantially like those mentioned above, but with some variation.

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In all cases begin with a caption or venue specifying the state, territory or district, and county or place where the authentication is made. In all cases add the signature and title of the officer taking the acknowledgment.

3. Acknowledgment in the Case of Natural Persons Acting in Their Own Right.

(Caption or Venue.)

On this day of , 19 , before me personally appeared , (or, and), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same, she may be described in the acknowledgment as his wife; but in all other respects her acknowledgment may be taken and certified as if she were sole, unless a separate examination in respect to the execution of any release of dower, or other instrument affecting real estate, be required by statute.

4. Acknowledgment in the Case of Natural Persons Acting by Attorney.

(Caption or Venue.)

On this day of , 19 , before me personally appeared , to me known to be the person who executed the foregoing instrument in behalf of , and acknowledged that he executed the same, as the free act and deed of said

5. Acknowledgment in the Case of Corporations or Joint Stock Associations.

(Caption or Venue.)

On this day of , 19 , before me appeared , to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or

trustees), and said _____ acknowledged said instrument to be the free act and deed of said corporation (or association).

In case the corporation or association has no corporate seal, omit the words, "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that." and add, after the words "or trustees" on next to the last line, the words "and that said corporation (or association) has no corporate seal."

6. Form of Proof of Authentication.

The following form of authentication of the certificate of acknowledgment of a deed or other written instrument when taken without the state and within any other state, territory or district of the United States, or any form substantially in compliance with the foregoing provisions of this act, may be used.

(Caption or Venue.)

I, _____, clerk of the _____ court in and for said county, which court is a court of record having a seal (or, I, _____, the secretary of state of such state or territory), do hereby certify that _____, by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said state (territory or district) to take and certify acknowledgments or proofs of deeds of land in said state (territory, or district), and further that I am well acquainted with the handwriting of said _____, and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or state) this _____ day of _____, 19 _____.

II. UNIFORM STATUTE IN REGARD TO ACKNOWLEDGMENT AND AUTHENTICATION.

Section 2. The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole, and without any examination separate and apart from her husband.

Section 3. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory, or district of the United States, may be made before any officer of such state, territory, or district authorized by the laws thereof to take the proof and acknowledgment of deeds, and, when so taken and certified as herein provided, shall be entitled to be recorded in this state, and may be read in evidence in the same manner and with like effect as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments, and whose authority so to do is not intended to be hereby affected.

Section 4. To entitle any conveyance or written instrument, acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state or territory, or a certificate of the clerk of a court of record of such state, territory, or district in the county in which said officer resides

or in which he took such proof or acknowledgment, under the seal of such court, stating that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take acknowledgments and proofs of deeds of lands in said state, territory, or district, and that said secretary of state, or clerk of court, is well acquainted with the handwriting of such officer, and that he verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine.

Section 6. The proof or acknowledgment of any deed or other instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by a person without the United States, may be made before any officer now authorized thereto by the laws of this state, or before any minister, consul, vice-consul, charge d'affaires, consular or commercial agent, vice-consular or vice-commercial agent, of the United States, resident in any foreign country or port, and when certified by him under his seal of office it shall be entitled to be recorded in any county of this state, and may be read in evidence in any court of this state, in the same manner and with like effect as if duly proved or acknowledged within this state.

III. OATHS AND AFFIRMATIONS ADMINISTERED ORALLY TO WITNESSES IN TAKING ACKNOWLEDGMENT OR PROOF.

It is customary for the party to put his hand on a bible or the new testament and kiss the same after taking the oath. Where the party has conscientious scruples against taking an oath, he may affirm as in forms 9 or 12.

7. Oath of a Subscribing Witness, Taken upon the Evangelists.

"You do solemnly swear, that you will true answers make to such questions as shall be put to you in regard to the parties to the deed here shown to you, and the execution thereof. So help you God."

8. The Same, Taken by Uplifting the Hand.

"You do swear, in the presence of the Everliving God, that you will true answers make to such questions as shall be put to you touching the parties to the deed here shown to you, and the execution thereof."

9. Affirmation of Subscribing Witness.

"You do solemnly, sincerely, and truly declare and affirm, that you will true answers make to such questions as shall be put to you touching the parties to the deed here shown to you, and the execution thereof."

10. Oath of a Witness to Identity of Party or Subscribing Witness, Taken on the Evangelists.

"You do solemnly swear, that you will true answers make to such questions as shall be put to you in regard to the identity of the parties [or, of the subscribing witnesses] to the deed here shown to you. So help you God."

11. The Same, Taken by Uplifting the Hand.

"You do swear, in the presence of the Everliving God, that you will true answers make to such questions as shall be put to you touching the identity of the parties [or, of the subscribing witnesses] to the deed here shown to you."

12. Affirmation of Witness to Identity of Party or Subscribing Witness.

"You do solemnly, sincerely, and truly declare and affirm, that you will true answers make to such questions as shall be put to you touching the identity of the parties [or, of the subscribing witnesses] to the deed here shown to you."

IV. CERTIFICATES OF ACKNOWLEDGMENT AND PROOF FOR THE VARIOUS STATES, ETC.**ALABAMA.**

1. *Seal*.—Not necessary. 2 Civ. Code, 1907, §§ 3356, 3363.
2. *Witnesses*.—Not necessary, if acknowledged; otherwise one required, and two where the grantor cannot write. *Ibid.*, §§ 3355, 3357.
3. *Husband and Wife*.—Husband and wife must join in conveyance by married woman, unless the husband be *non compos mentis*, or has abandoned the wife, or is a nonresident of the state, or is imprisoned under a conviction for crime for a period of two years or more. *Ibid.*, § 4494.
If eighteen or over wife may relinquish her dower by joining in conveyance of husband or in his power of attorney, or by a subsequent release, with separate acknowledgment in case of homestead or dower. Dower allowed. *Ibid.*, §§ 3812, 3818, 4161.
4. *Officers before whom Acknowledgments may be taken*:
(a) Within state: Judges of the supreme and circuit courts and their clerks, chancellors, registers in chancery, judges of probate courts, justices of the peace and notaries public.
(b) Without state and within U. S.: Judges and clerks of federal courts, judges of courts of record in any state, notaries public or commissioners appointed by the governor.
(c) Without U. S.: Judges of courts of record, mayors or chief magistrates of cities, towns, boroughs or counties, notaries public, diplomatic, consular or commercial agents of the U. S. *Ibid.*, §§ 3358, 3359.
5. *Forms*.—Prescribed by statute.

13. Acknowledgment.

(2 Civ. Code, 1907, § 3361.)

THE STATE OF

County, }

I, [name and style of officer], HEREBY CERTIFY, that _____, whose name is signed to the foregoing conveyance [or other instrument], and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand, this _____ day of _____, A. D.

A. B., Judge, etc. [or as the case may be].

14. Acknowledgment for Corporation.

(Ibid., § 3361.)

THE STATE OF ALABAMA, }

County, }

I, _____, a _____ in and for said county in said state, hereby certify that _____, whose name as _____ of the _____, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowl-

edged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand this day of , 19 .

15. Proof by Subscribing Witness.

(Ibid., § 3362.)

THE STATE OF , }
 County. }

I, [*name and style of the officer*], HEREBY certify that , a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that , the grantor, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor, and of the other witness, and that such other witness subscribed his name as a witness in his presence.

GIVEN under my hand, this day of , A. D. .

A. B., Judge, etc. [or as the case may be].

16. Separate Acknowledgment by Wife in Conveyance of Homestead Property.

(Ibid., § 4161.)

STATE OF ALABAMA, }
 County. }

I, , judge of , [*or other officer, as the case may be*], do hereby certify that on the day of , 19 , came before me the within-named , known to me [*or made known to me*] to be the wife of the within-named , who, being examined separate and apart from the husband touching her signature to the within , acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of the husband.

IN WITNESS WHEREOF, I hereto set my hand, this day of , 19 .
 , Judge [*or other officer, as the case may be*].

ALASKA.

1. *Seal or scroll.*—Private seals and scrolls abolished. Civ. Pro. Code, 1900, § 1041.

2. *Witnesses.*—Deeds executed within district must have two subscribing witnesses and may be acknowledged. Civ. Code, 1900, § 82.

3. *Husband and Wife.*—Married woman residing in the district must join with husband and acknowledge that she executed such deed freely and voluntarily. Where married woman not residing in the district shall join her husband, the conveyance shall have the same effect as if she was sole and the acknowledgment or proof of execution may be the same as if she was sole. Ibid., §§ 86, 87.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the district: Any judge, clerk of the district court, notary public, or commissioner within the district, who shall endorse thereon a certificate of acknowledgment and the true date of making the same under his hand.

(b) Without the district and within the states or territories or districts of the U. S.: Before any judge of a court of record, justice of the peace, notary public or other officer authorized by the laws of such state, territory or district to take acknowledgments, or before any commissioner appointed for such purpose. Such deed may be acknowledged according to the laws of the state, territory or district. Except in case of commissioner or notary with seal or clerk of court of record under seal of court, there must be a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which acknowledgment is taken, under the seal of his office, that the person taking acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district.

(c) Without the U. S.: May be taken according to laws of foreign country, and before any notary public with his seal of office, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul of the U. S., appointed to reside therein. *Ibid.*, §§ 82-85.

Officers taking acknowledgments must know or have satisfactory evidence that the person acknowledging is the individual described in and who executed the conveyance. Proof by subscribing witnesses must state his own place of residence and that he knew the person described in and who executed such conveyance. Officers taking acknowledgments must be personally acquainted with such subscribing witness or have satisfactory evidence that he is the same person who was a subscribing witness to such instrument. *Ibid.*, §§ 88, 89.

Defective acknowledgments cured. *Ibid.*, §§ 111-115.

5. *Forms.*—Not prescribed, but a deed executed outside of the district may be executed according to the laws of the state, territory, district or county wherein such acknowledgment is taken. *Ibid.*, §§ 83, 85.

17. Acknowledgment.

DISTRICT OF ALASKA, }
 , } ss.:

I certify that on this day of , in the year before me [*here insert name and quality of the officer*], personally appeared , to me personally known to be the individual described in and who executed the foregoing conveyance and acknowledged to me that he [*she or they*] executed the same.

18. Acknowledgment by Subscribing Witness.

DISTRICT OF ALASKA, }
 , } ss..

On this day of , in the year , before me [*here insert name and quality of the officer*], personally appeared , to me personally known [*or satisfactorily proved upon the oath of , to me personally known*], to be the same person who is one of the subscribing witnesses to the foregoing conveyance, and the said , being by me duly sworn, did state that he resided at , and that he knew , the grantor in the foregoing deed, and that he knew the said to be the person described in and who executed the said conveyance, and that thereupon the said duly acknowledged to him as said subscribing wit-

ness that he had duly executed the said conveyance for the purposes and uses therein mentioned.

19. Acknowledgment by Corporation.

DISTRICT OF ALASKA, }
 , } ss.:

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [*or, proved to me on the oath of*], to be the president [*or, the secretary*] of the corporation that executed the within instrument, [*where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary, insert: Known to me (or, proved to me on the oath of*) to be the person who executed the within instrument on behalf of the corporation therein named], and acknowledged to me that such corporation executed the same.

20. Acknowledgment by Attorney in Fact.

DISTRICT OF ALASKA, }
 , } ss..

On this day of , in the year , before me, [*here insert the name and quality of the officer*], personally appeared , known to me [*or, proved to me on the oath of*], to be the person whose name is subscribed to the within instrument as the attorney in fact of , and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact.

ARIZONA.

1. *Seal*.—Seal or scroll not necessary except by corporations. R. S. 1901, § 4054.

2. *Witnesses*.—Not necessary, but acknowledgment is. *Ibid.*, §§ 725, 737.

3. *Husband and Wife*.—Married woman of seventeen years of age or upwards may convey separate property, as though sole. Wife must join in conveyance of homestead and make separate acknowledgment; otherwise, separate acknowledgment not required. *Ibid.*, §§ 730, 731, 738.

4. *Officers before whom Acknowledgments may be taken*:

(a) Within the territory: Clerks of courts having seals, notaries public, county recorders, justices of the peace.

(b) Without the territory and within the U. S. or their territories: Clerks of courts of record having seals, commissioners of deeds appointed under the laws of the territory, notaries public.

(c) Without U. S.: Before ministers, commissioners or charges d'affaires of the U. S. resident and accredited in the country where the acknowledgment is made; consuls-general, consuls, vice-consuls, commercial agents, vice-commercial agents, deputy consuls, consular agents of U. S. resident in the country, notaries public. *Ibid.*, §§ 740-742.

Officer taking acknowledgment must know or have satisfactory evidence on the oath or affirmation of a creditable witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. *Ibid.*, § 744.

5. *Forms*.—Prescribed by *Ibid.*, § 746.

21. Acknowledgment.

TERRITORY OF _____, }
 County of _____, }

Before me _____, [here insert the name and character of the officer] on this day personally appeared _____, known to me [or proved to me on the oath of _____], to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN under my hand and seal of office, this _____ day of _____, A. D. .

Seal. _____ [Official title.]

My commission expires _____ day of _____, A. D. .

22. Acknowledgment by Married Woman in Conveying Homestead Property.

(Ibid., § 731.)

TERRITORY OF ARIZONA, } ss.:
 County of _____, }

Before me _____, [here insert the name and character of the officer], on this day personally appeared _____, wife of _____, known to me [or, proved to me on the oath of _____], to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN under my hand and seal of office, this _____ day of _____, A. D. .

My commission expires _____ day of _____, A. D. .

ARKANSAS.

1. *Seal.*—Seal not necessary. Constitution. See Digest of Statutes, 1904, p. 99.

2. *Witnesses.*—Execution must be in the presence of two disinterested witnesses or in default thereof shall be acknowledged by the grantor in the presence of two witnesses, who shall then subscribe. If they do not subscribe at the time of the execution the date of their subscribing shall be stated with their signatures. Digest of Statutes, 1904, § 742.

3. *Husband and Wife.*—Husband must join in property acquired prior to October 13, 1874. Otherwise, wife may convey as feme sole. Ibid., § 740. Married woman must join to release her dower. Ibid., § 741. Wife must join and acknowledge to convey or encumber homestead. Ibid., § 3901.

4. *Officers before whom Acknowledgments may be taken:*

(a) Within the state: Before the supreme court, the circuit court or either of the judges thereof, or the clerk of any court of record or a justice of the peace or notary public. Ibid., § 743.

(b) Without the state and within the U. S., or its colonies, possessions or dependencies: Any U. S. court or court of any state or territory or Indian territory or colony, possession or dependency of the U. S., having a seal, or the clerk of any such court, notaries public, mayors of any incorporated city or town or the chief officer of any city or town, having a seal, or commissioner appointed by the governor. When taken before any court or officer having a seal of office under such seal. If such officer has no seal, then under his official signature. Ibid., §§ 743, 744, 745.

(c) Without the U. S.: U. S. consuls or before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country

who by the laws of such country is authorized to take probate of the conveyance of real estate in his own country if such officer has by law an official seal. All acknowledgments and proofs must be under official seal of court or officer. *Ibid.*, §§ 743, 745.

5. *Forms.*—Prescribed by statute. *Ibid.*, p. 1672.

23. Acknowledgment by One Grantor.

(*Ibid.*, § 748.)

STATE OF ARKANSAS, }
County of , } ss.:

On this day of , 19 , before me, , a justice of the peace within and for the county of , in the state of Arkansas, appeared in person , to me personally well known as the person whose name appears upon the written and foregoing deed of conveyance as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such justice of the peace, in the county of , on the day of , 19 .

SAM EDMUNDSON, J. P.

Note.—If the grantor is unknown to the justice instead of the words "to me personally well-known as the person," say "who, being unknown to me, was proven to every satisfaction to be the identical _____ whose name appears upon the within and foregoing deed, as the party grantor by the oath of _____ and _____, witnesses, sworn and examined by me as to such identity, and stated," etc.

24. Proof of Deed by Subscribing Witness.

(*Ibid.*, § 749.)

STATE OF ARKANSAS. }
County of , } ss.:

Be it remembered, that on this day of , 19 , before me, , a justice of the peace in and for the county aforesaid, personally appeared , one of the subscribing witnesses to the foregoing deed, to me personally well known, who being by me first duly sworn, on his oath stated that he saw , grantor in said deed, subscribe said deed on the day of its date [or that the said , grantor in said deed, acknowledged in his presence, on the day of , 19 , that he had subscribed and executed said deed], for the uses, purposes and consideration therein expressed; and that he and , the other subscribing witness, subscribed the same as attesting witnesses at the request of said grantor.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such justice of the peace, at the county aforesaid, this day of , 19 .

JAMES HUTCHINS, J. P.

Note.—If the grantor is unknown to the justice instead of the words "to me personally well-known as the person," say "who, being unknown to me, was proven to every satisfaction to be the identical _____ whose name appears upon the within and foregoing deed, as the party grantor by the oath of _____ and _____, witnesses, sworn and examined by me as to such identity, and stated," etc.

25. Proof of Handwriting of Grantor and Subscribing Witness.

(Ibid., § 750.)

STATE OF ARKANSAS, }
County of , } ss.:

Be it remembered, that on this third day of May, 1904, before me, Timothy Kavanaugh, a justice of the peace in and for the county aforesaid, came and , and upon their oaths stated that the signatures of , the grantor in the within and foregoing deed, and of , a witness thereto, are genuine, and are in the handwriting of the said and respectively.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such justice of the peace, at the county aforesaid, this third day of May, 1904.

TIMOTHY KAVANAUGH, J. P.

26. Acknowledgment of a Deed Executed by a Single Man, or Married or Single Woman.

(Ibid., §§ 748, 740.)

STATE OF ARKANSAS, }
County of Miller. } ss..

Before me, J. O. Reeves, a justice of the peace within and for said county and state, personally appeared on this eighteenth day of May, 1904, Ursula Halifax, to me well known [*or made known as in form of acknowledgment by one grantor*] as the party grantor in the foregoing deed, and acknowledged that she [*or he*] executed the same for the consideration and purposes therein mentioned and set forth. And I do so certify.

GIVEN under my hand this eighteenth day of May, 1904.

J. O. REEVES, J. P.

27. Acknowledgment by Husband and Wife in Conveyance of Homestead.

(Ibid., §§ 748, 751, 3901.)

STATE OF ARKANSAS, }
County of Miller. } ss.:

Be it remembered, that on this day came before me, the undersigned, a justice of the peace within and for the county aforesaid, duly commissioned and acting, Josiah Allen, to me well known as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth. And on the same day also voluntarily appeared before me, the said Samantha Allen, wife of the said Josiah Allen, to me well known, and in the absence of her said husband declared that she had, of her own free will, executed said deed and signed and sealed the relinquishment of dower and homestead in the said deed for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

WITNESS my hand as such justice of the peace on this fifth day of November, 1904.

W. J. SMITHER, J. P.

CALIFORNIA.

1. *Seal*.—Not necessary. Civ. Code, 1909, § 1629.

2. *Witnesses*.—Not necessary; except where instrument is signed by mark, when two are necessary. *Ibid.*, § 14.

3. *Husband and wife*.—Both parties must join to release homestead estate; otherwise either may convey his or her separate property. No separate acknowledgment required; no dower or curtesy. *Ibid.*, §§ 173, 687, 1187, 1242.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Justices of supreme court and judges of superior courts or clerks of supreme court at any place within the state; justices of the peace, clerks of courts of record, county recorders, court commissioners, notaries public, within the city, county or township for which the officer was elected or appointed. Deputies of all the enumerated officers have the same powers.

(b) Without state and within United States: Justices, judges and clerks of courts of record of the United States or or any state, notaries public and commissioners appointed by the governor, or any officer of the state where acknowledgment is taken, authorized by its law to take such acknowledgments. [*State includes territories and District of Columbia.*] Deputies of all the enumerated officers have the same power.

(c) Without United States: Ministers, commissioners or chargés d'affaires of the United States, resident and accredited in the country where acknowledgment made, consuls, vice-consuls and consular agents of the United States resident in the country where acknowledgment made, judges of courts of record of the country where acknowledgment made, notaries public and commissioners appointed for such purpose by the governor. Deputies of all the enumerated officers have the same power. *Ibid.*, §§ 1180-1185.

5. *Forms*.—Should substantially comply with statute, but any acknowledgment taken without the state in accordance with the laws of the place where acknowledgment is made is sufficient, provided that the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be *prima facie* evidence of the facts stated in the certificate of said clerk. *Ibid.*, § 1189. Officers taking acknowledgments must add their official title and seals, if any, or if by law they are required to have seal. *Ibid.*, § 1193.

Certificates of justices of the peace when used in any county other than that in which they reside must have certificate under hand and seal of clerk of county in which justice resides that such justice at the time of taking such proof or acknowledgment was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine. *Ibid.*, § 1194.

A subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it and that the witness subscribed his name thereto as a witness. *Ibid.*, § 1197.

28. Acknowledgment.

(*Ibid.*, § 1189.)

STATE OF _____, }
County of _____, } ss.

On this _____ day of _____, in the year _____, before me [*here insert name and quality of the officer*], personally appeared _____, known to me [or,

proved to me on the oath of [] to be the person whose name is subscribed to the within instrument, and acknowledged that he [she or they] executed the same.

29. Acknowledgment by Corporation.

(Ibid., § 1190.)

STATE OF
County of , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [*or, proved to me on the oath of*] to be the president [*or, the secretary*] of the corporation that executed the within instrument [*where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary, insert: Known to me (or, proved to me on the oath of*) to be the person who executed the within instrument on behalf of the corporation therein named] and acknowledged to me that such corporation executed the same.

30. Acknowledgment by Attorney in Fact.

(Ibid., § 1192.)

STATE OF
County of , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*] personally appeared , known to me [*or, proved to me on the oath of*] to be the person whose name is subscribed to the within instrument as the attorney in fact of , and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact.

COLORADO.

1. *Seal.*— Scroll or seal not necessary. Revised Statutes of 1908, §§ 682, 683.

2. *Witnesses.*— Not required if acknowledged; otherwise one. Deeds, bonds, agreements and powers of attorney acknowledged or proved in accordance with chapter 28 of the Revised Statutes, or acknowledged, attested or proved in accordance with the laws of this state or the local laws of the mining district wherein such real estate is situate, in force at the date of such acknowledgment, attestation or proof, may be read in evidence without, in the first instance, additional proof of the execution thereof, and the record of any such deed, bond, agreement or power of attorney, whether an original record of any mining district, or a copy thereof deposited in the recorder's office of any county, in accordance with the laws of this state (as a part of the records of such mining district), or a record of such recorder's office when the same appears by such record to be properly acknowledged, attested or proven in accordance with the laws of this state or of the proper mining district, in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record, certified by the recorder of the proper county, where such deed, bond, agreement or power

of attorney ought by law to be of record, may, upon affidavit of the party desiring to use the same, that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, bond, agreement or power of attorney, properly acknowledged, attested or proved as aforesaid. *Ibid.*, § 695. Deeds, bonds and agreements in writing, for the conveyance or encumbering of real estate or any interest therein, shall be deemed, from the time of being filed for record, notice to subsequent purchasers or encumbrancers, though not acknowledged or proven according to law, but neither the same nor the record thereof shall be read as evidence unless subsequently acknowledged or proved, according to law, nor unless their execution be otherwise proved as required by the rules of evidence applicable to such writings so as to supply the defects of such proof. *Ibid.*, § 696.

3. *Husband and wife.*—Wife need not join in husband's deed, nor husband in wife's, except in mortgaging or otherwise conveying homestead property. *Ibid.*, §§ 4190, 2955. In this latter case wife must freely and voluntarily, separate and apart from her husband, sign and acknowledge the deed, and the officer taking the acknowledgment shall fully apprise her of her rights and the effect of signing the said mortgage or other conveyance.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Before any judge or clerk of any court of record or the deputy of such clerk, under the seal of such court; before the clerk and recorder of any county or his deputy, under the seal of such county; before any notary public under his seal; before any justice of the peace within his county. But if the instrument be for the conveyance of land situated beyond the county of such justice of the peace, there must be affixed to the acknowledgment a certificate of the county clerk and recorder of the proper county, under his hand and the seal of such county to the official capacity of such justice of the peace, and that the signature to such certificate of acknowledgment is the true signature of such justice; any clerk or deputy of the United States circuit or district court for Colorado.

(b) Without the state and within the United States: Secretary of any state or territory under the seal of the state or territory, clerk of any court of record of such state or territory or of the United States, within such state or territory under the seal of such court, notary public under seal, commissioner of deeds appointed under the laws of Colorado under his official seal, any officer authorized by the laws of such state or territory to take or certify such acknowledgment, but there must be affixed to the certificate of such officer other than those above enumerated, a certificate by the clerk of some court of record of the county, city or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be, that he has the authority by the laws of such state or territory to take such acknowledgment, and that the signature of such officer to the certificate or acknowledgment is the true signature of such officer.

(c) Without the United States: Any court of record of any foreign republic, kingdom, empire, state, principality or province having a seal, the acknowledgment being certified by the judge or justice of such court to have been made before such court, and such certificate to be attested by the seal of such court; the mayor or other chief officer of any city or town having a seal, under such seal; any consul of the United States within such foreign country, under the seal of his consulate. *Ibid.*, §§ 684, 685.

5. *Forms.*—Prescribed by *Ibid.*, § 691.

31. Acknowledgment.

STATE OF COLORADO, }
 County of , } ss.

appeared before me this day of , 19 , in person, and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal.

A. B.,
 [Title of officer.]

[In case of a notary public add:]

My commission as notary expires on the day of .

Any deed or instrument relating to or affecting the title of real estate, acknowledged substantially in accordance with the above form before a proper officer, shall be *prima facie* evidence of the proper execution thereof. *Ibid.*, §§ 691, 4664.

32. Acknowledgment of Chattel Mortgage.

Before any officer authorized to take the acknowledgment of deeds to real estate.

STATE OF COLORADO, }
 County of , } ss.

This mortgage was acknowledged before me by A. B. [here insert the name of the mortgagor] this day of , A. D. 19 .

[Name and title of officer.]

My commission as notary expires on the day of .

33. Acknowledgment by Married Woman.

STATE OF COLORADO, }
 County of , } ss.

I, , in and for the said county, in the state aforesaid, do hereby certify that who personally known to me to be the person whose name subscribed to the within instrument of writing, appeared before me this day in person, and acknowledged that signed, sealed and delivered the said instrument of writing as free and voluntary act and deed, for the uses and purposes therein set forth, and that the said , wife of the said , did, after having been by me fully apprised of her rights and the effect of signing said instrument of writing, freely and voluntarily, separate and apart from her husband, sign and acknowledge the same.

Given under my hand and seal, this }
 day of , A. D. 19 . }

My commission expires , 19 ,

CONNECTICUT.

1. *Seal.*—Necessary. G. S., 1902, § 4029.
2. *Witnesses.*—There should be two subscribing witnesses. *Ibid.*, § 4029.
3. *Husband and wife.*—If married since April 20, 1877, wife may convey alone. *Ibid.*, § 4035. And in other cases wife may convey alone if abandoned

by husband or husband is insane, and sale is authorized by probate court. Ibid., §§ 246, 247. Wife usually entitled to dower if married prior to April 20, 1877. Ibid., § 386; and community rights if married since that date. Ibid., § 391.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: Judges of courts of record of the state or of the United States, clerks of the superior court, common pleas or district courts, justices of the peace, commissioner of the school fund, commissioner of the superior court, a notary public either with or without his official seal, town clerks or assistant town clerks.

(b) Without state and within United States: Commissioners appointed by the governor and residing therein, or officers of the several states or territories authorized to take acknowledgments therein.

(c) Without United States: Consuls of the United States, notaries public, justices of the peace within their jurisdictional districts. Ibid., § 4029.

Conveyances to or by corporations may be attested by witnesses interested therein and be acknowledged before properly authorized persons who are so interested. Ibid., § 4030.

Conveyances of real estate in Connecticut and powers of attorney therefor, executed and acknowledged in any other state or territory in conformity with its laws relative to the conveyance of lands therein situated, are valid. Ibid., § 4031.

5. *Forms.*—No statutory provision as to these.

34. Acknowledgment.

STATE OF CONNECTICUT, }
County of , } ss.

[Date.]

Personally appeared A. B., signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

[Signature and title.]

35. Acknowledgment by Husband and Wife.

STATE OF CONNECTICUT, }
County of , } ss.

On the day of , 19 , before me, , personally appeared
and , his wife, signers and sealers of the foregoing instrument,
and severally acknowledged the same to be their free act and deed before me.

Witness my hand and seal of office on this day of , 19 .

[Signature and title.]

36. Acknowledgment by Corporation.

STATE OF CONNECTICUT, }
County of , } ss.

[Date.]

Personally appeared A. B., who being duly authorized and appointed by vote of the directors of the said [naming the corporation], the agent of said company, for the purpose of executing the foregoing instrument, acknowledged that he executed the same as the free act and deed of the said corporation, and as his own free act and deed, before me.

[Signature and title.]

DELAWARE.

1. *Seal*.—Scroll is a sufficient seal.
 2. *Witnesses*.—One witness necessary in absence of acknowledgment. R. S., 1893, c. 83, § 3.

3. *Husband and wife*.—Wife must join in husband's deed and be separately examined. Husband must join in wife's conveyance to bar curtesy, and the wife to bar her dower. *Ibid.*, c. 83, §§ 4, 5.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: In any county, in the superior court, or before the chancellor or any judge or notary public, or two justices of the peace for the same county; or in the superior court by attorney, by virtue of a power contained in it or separate from it; the power being first proved in the said court. Also such deed may be proved in the said court by one or more of the subscribing witnesses. The certificate of acknowledgment of the clerk or prothonotary shall be under seal of court. Two justices of the peace when taking or certifying an acknowledgment or private examination must be together.

(b) Without state: Consuls-general, consuls, vice-consuls, consular agents or commercial agents of the United States, duly appointed in any foreign country at the places of their respective official residence, judges of district or circuit courts of the United States, chancellor or judges of courts of record of any state, territory or country, or the mayors or chief officers of cities or boroughs, notaries public, commissioners appointed by governor, or may be taken in open court.

Certificates of chancellors, judges, mayors or officers, must be certified under their hands and the seal of their office, court, city or borough, by certificate indorsed upon or annexed to the deed. Acknowledgment taken in open court must be certified by the clerk or other officer of said court under its seal. The seal of the court may be affixed to the certificate of a judge or to a certificate of attestation of the clerk or keeper of the seal. *Ibid.*, c. 83, §§ 3, 10, and L. 1883, c. 212.

5. *Forms*.—Provided by R. S., 1893, c. 83, § 9.

37. Acknowledgment.

STATE OF DELAWARE, }
 County of , } ss.

Be it remembered, that on this day of , in the year of our Lord one thousand nine hundred and , personally came before the subscribers, two of the justices of the peace for county aforesaid, and , his wife, parties to this indenture [*or, if it be not an indenture, say instrument*], known to us personally [*or, proved on the oath of*] to be such, and severally acknowledged said indenture to be their act and deed* respectively, and that the said , being at the same time privately examined by us, apart from her husband, acknowledged that she executed the said indenture [*or, instrument*] willingly, without compulsion, or threats, or fear of her husband's displeasure.

Witness our hands the day and year aforesaid.

[*Signatures and titles.*]

*The words "and deed" are to be omitted if instrument is not under seal.

If an acknowledgment only, or private examination only, be taken the form must be varied according to the case; and so of other cases requiring a variance, the above form being given for general direction.

38. Acknowledgment by Corporation.

STATE OF DELAWARE, }
 County of , } ss.

Be it remembered, that on the day of , in the year , before us, two of the justices of the peace for county aforesaid, came A. B., the president of the Bank of , to us personally known, and who, being by us duly sworn, deposes and says: That he resides in the village of , in said county; that he is the president of the Bank of ; that the seal affixed to the within indenture is the corporate seal of the president, directors, and company of the said bank, and was affixed to the said indenture by the order and resolution of said directors, for the uses therein expressed; and that he, by like order, did subscribe his name thereto, as president of said bank.

[Signatures and titles of magistrates.]

Conveyances of land executed by a corporation may be [*executed and*] acknowledged before the chancellor or any judge of this state or a judge of the district or circuit court of the United States, or a notary public or two justices of the peace of the same county, by the president or other presiding officer [*duly authorized by resolution of the directors, trustees or other managers or by the**] legally constituted attorney of such corporation. *Ibid.*, § 6.

DISTRICT OF COLUMBIA.

1. *Seal or scroll.*—Probably necessary.
 2. *Witnesses.*—Two customary.
 3. *Husband and wife.*—No separate examination. Wife not less than eighteen years of age may release dower by joining in husband's conveyance or by separate release. Dower and curtesy exist. Wife has full power to dispose of property as though unmarried. Garges Code of 1901 as amended to 1905, §§ 1152-1159, 494.
 4. *Officers before whom acknowledgments may be taken:*
 - (a) Within the district: Judges of any of the courts of the district, clerk of the supreme court of the district, justices of the peace, notaries public, recorder of deeds.
 - (b) Within the United States: Judges of courts of record and of law, chancellors of states, judges or justices of the supreme, circuit or territorial courts of the United States, justices of the peace, notaries public. But certificate made by any officer of the state or territory not having a seal should be accompanied by the certificate of the register, clerk or other public officer, that the officer taking such acknowledgment was in fact the officer he professed to be.
 - (c) Without the United States: Before judges or notaries public, or before any secretary of legation or consular officer, or acting consular officer of the United States, as such consular officer is described in § 1674 of United States Revised Statutes. When acknowledgment is made before any other officer than a secretary of legation or consular officer or acting consular officer of United States, his official character must be certified as prescribed in relation to acknowledgments within the United States. *Ibid.*, §§ 495, 496.
- Deeds of corporations must have their seal attached and be signed with name of corporation by its president or other officer, and be acknowledged as the deed of the corporation by an attorney appointed for that purpose,

* So in original.

by a power of attorney embodied in the deed or by one separate therefrom under the corporate seal, to be annexed to and recorded with the deed. *Ibid.*, § 497.

No deeds of conveyance of real or personal estate by individuals shall be executed or acknowledged by attorney. *Ibid.*, § 498.

5. *Forms.*—Prescribed by *Ibid.*, § 493.

39. Acknowledgment.

District of Columbia, to wit:

I, A. B., a justice of the peace [*or other officer authorized*] in and for the District of Columbia, do hereby certify that C. D., the party to a certain deed bearing date on the day of , and hereto annexed, personally appeared before me in said District, the said C. D. being personally well known to me as [*or proved by the oath of credible witnesses to be*] the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this day of .
A. B. [SEAL.]

40. Acknowledgment by Corporation.

Ibid., § 497.

District of Columbia, ss.:

I, A. B., a justice of the peace [*or other officer authorized*] in and for the District of Columbia, do hereby certify that on this day of , C. D., the attorney to a certain deed bearing date on the day of , hereto annexed and made by the company as grantor, personally appeared before me in said District, the said C. D. being personally known to me as [*or proved by the oath of credible witnesses to be*] the person who executed the said deed as to the attorney for the said company, and thereupon the said acknowledged the said deed as the deed of the corporation, executed by him as such attorney appointed for that purpose by a power of attorney embodied in the said deed [*or by a power of attorney separate from said deed, under the corporation seal, and to be annexed and recorded with said deed*].

Given under my hand and seal this day of .
A. B. [SEAL.]

41. Separate Examination of Wife.

..... }
 } *to-wit:*
 }

I, , a in and for the said aforesaid, do hereby certify that part to a certain deed bearing date on the day of , A. D. 19 , and hereunto annexed, personally appeared before me, in the aforesaid, the said being personally well known as the person who executed the said deed and acknowledged the same to be act and deed;

and the said being by me examined privily and apart from husband and having the deed aforesaid fully explained to acknowledged the same to be act and deed, and declared that willingly signed, sealed and delivered the same, and that wished not to retract it.

Given under my hand and official seal this day of , A. D. 1 .

[SEAL.]

FLORIDA.

1. *Seal*.—Scrawl or scroll, printed or written, may be used for seal. General Statutes of 1906, §§ 2485.

2. *Witnesses*.—Two required. *Ibid.*, § 2448.

3. *Husband and wife*.—Must join in conveying homestead. Wife may sell, convey or mortgage her other real property, provided her husband joins. She must join in husband's deed or release by separate instrument and must be separately and privately examined. *Ibid.*, §§ 2460-2462.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Judges, clerks or deputy clerks of any court of record, United States commissioners, notaries public or justices of the peace, under seal of the court or officer, as the case may be.

(b) Without state and within United States: Commissioners of deeds appointed by the governor, judges or clerks of any court of the United States, or of any state, territory or district, having a seal, or before a notary public or justice of the peace of such state, territory or district having an official seal, and certificate of acknowledgment or proof to be under the seal of the court or officer, as the case may be.

(c) Without the United States: Commissioners of deeds appointed by the governor to reside in such country, notaries public of such country having official seal, ministers, charges d'affaires, consuls-general, consuls, vice consuls, commercial agents or vice-commercial agents of United States appointed to reside in such country, under seal of officer. *Ibid.*, § 2481.

5. *Forms*.—Not expressly prescribed by statute.

42. Acknowledgment.

STATE OF FLORIDA, }
County of , } ss.

On this day personally appeared before me, M. N. [official title], A. B., to me well known as [or, to me satisfactorily proven to be] the person described in and who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed and prays that it may be admitted to record.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at , this day of , 19 .

[SEAL.]

M. N.

[Official title.]

43. Acknowledgment by Married Woman.

(*Ibid.*, § 2462.)

STATE OF FLORIDA, }
County of , } ss.

On this day personally appeared before me, M. N. [official title] A. B., to me well known as [or, to me satisfactorily proven to be] the wife of C. B., the

person described in and who executed the foregoing instrument, who, being by me examined separate and apart from her husband, the said A. B. acknowledged that she made herself a party to the foregoing instrument, for the purpose of relinquishing all her right, title, dower and interest, either legal or equitable, in and to the said premises, and that she executed the same freely and voluntarily, and without compulsion, restraint, apprehension or fear of or from her said husband, the said C. B.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at
 , this day of , 19 .

[SEAL.]

M. N.

[*Official title.*]

44. Acknowledgment Before Commissioner, of Deed Executed or Acknowledged Without the State, by Grantor not Personally Known.

STATE OF , }
 County of , } ss.

On this day of , 19 , before me, I. K., a commissioner duly appointed and authorized by the executive authority, and under the laws of the state of Florida, to take, within the state of , proof and acknowledgment of deeds, etc., to be used and recorded in said state of Florida, personally appeared A. B., who was proven to me satisfactorily to be the person described in, and who executed the foregoing instrument, by the oath of M. N., who, being by me duly sworn, did depose and say: That he resided in , in the county of ; that he was acquainted with the said A. B., and that he knew him to be the same person described in, and who executed the foregoing conveyance; and thereupon the said A. B. acknowledged that he executed the same for the purposes therein expressed and prays that it may be admitted to record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at , the day and year first above written.

[*Signature, title and seal.*]

45. Acknowledgment Before Judge in a City or County Where There is no Florida Commissioner.

STATE OF , }
 County of , } ss.

Be it remembered, that on this day of , 19 , before me, M. N., the chief justice [*or, one of the judges, or, the presiding justice, or the president*] of the court of [*naming any court of record having seal and clerk or prothonotary*], which said court is a court of record, personally appeared at , within the jurisdiction of said court, A. B. [*and C. D.*],

to me personally known as [*or, to me satisfactorily proven to be*] the person [*or, persons*] described in, and who executed the foregoing instrument, and [*severally*] acknowledged the execution thereof to be his [*or, their*] free act and deed, for the uses and purposes therein mentioned.

[*Signature and title of judge.*]

46. Certificate of Clerk to be Annexed to the Foregoing.

STATE OF _____, }
County of _____, } ss.

I, O. P., clerk [*or, prothonotary*] of the court of _____, at _____, do hereby certify that M. N., the person whose name is subscribed to the annexed certificate of acknowledgment, was at the date thereof the chief justice [*or other judge*] of said court, duly appointed as such, and that I verily believe the signature of his name subscribed to be genuine.

WITNESS my hand and seal of office this _____ day of _____, 19 ____.

[*Signature, title and seal.*]

47. Acknowledgment by Husband and Wife.

STATE OF _____, }
County of _____, } ss.

I, an officer authorized to take acknowledgments of deeds according to the laws of the state of Florida, duly qualified and acting, hereby certify that _____, to me personally known, this day acknowledged before me that executed the foregoing mortgage, and I further certify that I know the said person making said acknowledgment to be the individual described in and who executed the said mortgage. And I further certify that said _____ is known to me to be the wife of said _____, and that she this day acknowledged to and before me, separately and apart from her husband, that she executed the said mortgage deed for the purpose of renouncing and relinquishing her dower and separate estate in and to the lands therein described, and that she executed the same freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her said husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal at _____, said county and state, this _____ day of _____, A. D. 19 ____.

.....
.....

GEORGIA.

1. *Seal*.—Seal or scrawl or any other mark intended as a seal is sufficient. Code of 1895, §§ 5, 3599.

2. *Witnesses*.—Two necessary, one of whom may be the officer taking the acknowledgment. Ibid., § 3599, Supplement to Code 1901, § 6184.

3. *Husband and wife*.—Wife must join in conveying real property of husband. Code 1895, § 3622. Separate acknowledgment in form below. Ibid., §§ 3622, 4689. Not necessary for married women to join in husband's deeds in lands not derived from or through her. Ibid., § 4689; 92 Ga. 263. No curtesy. Code 1895, § 3194.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Judges of courts of record, justices of the peace, notaries public or clerk of the superior court in the county in which the last three mentioned officers respectively hold their appointment, or, if subsequent to its execution, the deed is acknowledged in the presence of either of the above-named officers, that fact, certified on the deed by such officer, shall entitle it to be recorded. Ibid., § 3620.

(b) Without the state: Commissioners of deeds for the state of Georgia, consuls or vice-consuls of United States [*the certificate of these officers under their seal being evidence of the fact*], a judge of a court of record in the state where executed, with a certificate of the clerk under the seal of such court of the genuineness of the signature of such judge, a clerk of a court of record under the seal of such court, a notary public of the state or county where executed, with his seal of office attached, and if he have no seal, then his official character shall be certified to by a clerk of any court of record in the county of the residence of the notary. Code Supplement of 1901, § 6184.

5. *Forms*.—Prescribed by Code 1895, §§ 3620-3622.

If a deed is neither attested by nor acknowledged before either of the officers aforesaid, it may be admitted to record upon the affidavit of a subscribing witness before either of the above-named officers, testifying to the execution of the deed and its attestation according to law. A substantial compliance with this requisition shall be held sufficient in the absence of all suspicion of fraud. Ibid., § 3623.

48. Acknowledgment.

STATE OF GEORGIA, }
County of , } ss.

Personally before me, M. N., the undersigned [*naming officer and title*], comes A. B., to me personally known to be the person described in, and who executed the foregoing [*or, within*] conveyance, and acknowledged the same to be his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this
day of .

[*Signature and title.*]

49. Acknowledgment by Married Woman.

(Code 1895, § 3622.)

STATE OF GEORGIA, }
 County of , } ss.

I, A. B., the wife of C. D., do declare that I have freely and without any compulsion, signed, sealed and delivered the above instrument of writing, passed between D. E. and C. D., and I do hereby renounce all title or claim of dower that I might claim or be entitled to, after the death of C. D., my said husband, to or out of the lands or tenements therein conveyed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

A. B.

50. Probate by Subscribing Witness.

State of Georgia, *County:*

Personally before me, a , in and for said county, comes , to me personally known, who, being duly sworn, deposes and says, that on the date of the foregoing deed he saw the grantor, , sign, seal and deliver the same for the purposes therein mentioned; and that thereupon deponent and both signed the same as witnesses at the request of the grantor.

Sworn to and subscribed before me

HAWAII.

1. *Seal or scroll.*—Usual.
2. *Witnesses.*—One required if no acknowledgment. Revised Laws 1905, § 2361.
3. *Husband and wife.*—Wife, unless divorced, must join in conveyance or by separate release, and acknowledge apart from her husband that she had signed such release without compulsion, fear or restraint from her husband. No deed or mortgage of her real estate shall be valid without the written consent of her husband. *Ibid.*, §§ 2251, 2367.
4. *Officers before whom acknowledgments may be taken:*
 Within the territory, before the registrar of conveyances or his agent, or before some judge of a court of record or notary public. In any foreign country before a notary public or judge of a court of record. *Ibid.*, § 2361.
5. *Forms.*—Prescribed by *Ibid.*, §§ 2364, 2365.

51. Acknowledgment When Person Is Known.

(Ibid., § 2364.)

TERRITORY OF HAWAII, }
 Island of , } ss.

On this day of , A. D. , personally appeared before me A. B., known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth.

52. Acknowledgment When Person Is Unknown.

(Ibid., § 2365.)

TERRITORY OF HAWAII, }
 Island of , } ss.

On this day of A. D. , personally appeared before me A. B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C. D., a credible witness for that purpose, to me known and by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily for the uses and purposes therein set forth.

53. Acknowledgment by Husband and Wife.

TERRITORY OF HAWAII, }
 Island of , } ss.

On this day of A. D. , personally appeared before me A. B. and C. D., known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein set forth. And the said C. D., being examined by me apart from her said husband, acknowledged that she had signed such conveyance and release without compulsion, fear or restraint from her said husband.

IDAHO.

1. *Seal*.—All distinctions between sealed and unsealed instruments are abolished except corporate or official seals. Revised Codes of 1908, §§ 3318, 3319.

2. *Witnesses*.—One required to prove in absence of acknowledgment. Ibid., § 3136.

3. *Husband and wife*.—Husband, if a resident, must join in conveyance of wife's separate estate or homestead (Ibid., § 3107), but she may convey alone her separate real property if her husband has not been a *bona fide* resident of the state at any time within the year next preceding her conveyance. Ibid., § 3108. No separate acknowledgment. Ibid., § 3129. Both must join in instrument affecting homestead. Ibid., § 3106.

All property owned by wife before marriage and acquired afterward by gift, bequest or descent, or by the proceeds of her separate property is her sole and separate property, of which she has the management, control and absolute power of disposition. Ibid., §§ 2676, 2677.

All property owned by husband before marriage or acquired by gift, bequest, devise or descent is his separate property. Ibid., § 2679. All other property acquired after marriage by either husband or wife, including the rents and profits of their separate property, is community property unless by the instrument by which such property is acquired by the wife, it is provided

that the rents and profits thereof be applied to her sole and separate use. *Ibid.*, § 2680.

Husband has management and control of community property with a like absolute power of disposition (other than testamentary) as he has of his separate estate, excepting that part of the common property occupied or used by the husband and wife as a residence. *Ibid.*, §§ 2686, 2687. Curtesy and dower abolished. *Ibid.*, § 2687.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: At any place within state, before a justice or clerk of the supreme court: Within the city, county or district for which the officer was elected or appointed, by judges or clerks of a court of record, county recorders, notaries public, justices of the peace. *Ibid.*, §§ 3123, 3124.

(b) Without state and within United States: Within the jurisdiction of the officer, by justices, judges or clerks of any court of record of United States, or of any state or territory; commissioners appointed by the governor, notaries public, any other officer of state or territory where acknowledgment is made, authorized by its law to take acknowledgments. *Ibid.*, § 3125.

(c) Without United States: United States ministers, commissioners or chargés d'affaires resident and accredited in the country where acknowledgment is made; United States consuls or vice-consuls resident in country; judges of courts of record of the country; commissioners appointed by the governor pursuant to statute; notaries public. *Ibid.*, § 3126.

When any of the officers above mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal. *Ibid.*, § 3127.

Officers taking acknowledgments must give their official titles and their seals of office, if required to have official seals. If acknowledgment made before justice of the peace in any county other than that in which he resides, there must be a certificate under the hand and seal of the recorder of the county in which the justice resides, setting forth that such justice at the time of taking such proof or acknowledgment was authorized to take the same and that the recorder is acquainted with his writing and believes that the signature to the original certificate is genuine. *Ibid.*, §§ 3134, 3135.

Proof of execution, when no acknowledgment, may be made by the parties executing it or either of them, or by subscribing witness, or by other witnesses in certain cases. *Ibid.*, § 3136.

5. *Forms* prescribed by *Ibid.*, §§ 3131-3133.

54. Acknowledgment.

(*Ibid.*, § 3131.)

STATE OF IDAHO, }
County of , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [*or, proved to me on the oath of*] to be the person whose name is subscribed to the within instrument, and acknowledged to me that he [*or they*] executed the same.

IN WITNESS, I have hereunto set my hand and official seal the day and year in this certificate first above written.

55. Acknowledgment by Corporation.

(*Ibid.*, § 3132.)

STATE OF IDAHO, }
County of , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me

[*or proved to me on the oath of*] to be the president [*or the secretary*] of the corporation that executed the instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year in this certificate first above written.

56. Acknowledgment by Attorney.

(Ibid., § 3133.)

STATE OF IDAHO, }
County of , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [*or proved to me on the oath of*] to be the person whose name is subscribed to the within instrument as the attorney in fact of , and acknowledged to me that he subscribed the name of thereto as principal and his own name as attorney in fact.

57. Acknowledgment by Husband and Wife.

STATE OF IDAHO, }
County of , } ss.

On this day of , in the year 19 , before me a in and for said county, personally appeared known to me to be the person whose name subscribed to the within instrument, and acknowledged to me that executed the same, and on this day of in the year 19 , before me, the officer above described, personally appeared known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

ILLINOIS.

1. *Seal*.— Seal or scrawl by way of seal sufficient. R. S., 1908, ch. 29, § 1.
2. *Witnesses*.— Not required.
3. *Husband and wife*.— Married woman below eighteen years may join with her husband in execution of any instrument relating to the sale, conveyance or other disposition of her lands or real estate. Ibid., ch. 30, § 18. She may acknowledge as a *feme sole*. Ibid., ch. 30, § 19. Curtesy abolished: "The estate of curtesy is hereby abolished, and the surviving husband or wife shall be endowed of the third part of all the lands whereof the deceased husband or wife was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in due form. Equitable estates shall be subject to such dower, and all real estate of every description contracted for by the deceased husband or wife, in his or her lifetime, a title of which may be completed after his or her decease." Ibid., ch. 41, § 1. Any deed or other instrument releasing or waiving right of homestead must contain a clause expressing substantially as follows: "Including the release and waiver of the right of homestead," or other words

which shall expressly show that the parties executing the deed or other instrument intended to release such right. Wife must join to release or waive right of homestead. *Ibid.*, ch. 30, § 27.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Before a master in chancery, notary public, United States commissioner, county clerk, justice of the peace, or any court of record having a seal or any judge, justice, clerk or deputy clerk of any such court. A notary public or United States commissioner must attest by his official seal. When taken before a court or clerk or deputy clerk thereof, the seal of the court must be added. When taken before a justice of the peace there must be the certificate of the county clerk under his seal of office, that party was a justice of the peace in said county at the time of taking the same. If the justice of the peace reside in the county where the lands mentioned in the instrument are situated, no such certificate is required.

(b) Without the state and within the United States or in any of its territories or dependencies, or District of Columbia: Before a justice of the peace, notary public; master in chancery, United States commissioner, commissioner to take acknowledgments of deeds, mayor of city, clerk of a county, or before any judge, justice, clerk or deputy clerk of the United States supreme, circuit or district courts, or before any judge, justice, clerk or deputy clerk, prothonotary, surrogate or registrar of the supreme, circuit, superior, district, county, common pleas, probate, orphans' or surrogates' courts of any of the states, territories or dependencies of the United States. In any dependency such acknowledgment or proof may be taken before any commissioned officer in the United States military service. Notaries public, United States commissioners and commissioners of deeds shall certify under seal of office; a mayor under seal of his city; a clerk, deputy clerk, prothonotary, registrar or surrogate under the seal of his court; a justice of the peace or master in chancery must add a certificate of the proper clerk under his seal of office that the person before whom such proof or acknowledgment was made was a justice of the peace or master in chancery at the time of taking such proof or acknowledgment. An acknowledgment or proof may be made in accordance with the laws of the state, territory, dependency or district where it is made, provided that the clerk of any court of record therein shall, under the seal of the court, certify that such acknowledgment or proof was made in conformity with the laws of such state, territory, dependency or district, or it shall appear that by the laws of such state, territory, dependency or district such instrument or a duly proved or certified copy of the record of such deed, mortgage or other instrument relating to real estate heretofore or hereafter made and recorded in the proper county may be read in evidence as in other cases of such certified copies.

(c) Without the United States: Before any court of any, republic, dominion, state, kingdom, empire, colony, territory or dependency, having a seal, or before any judge, justice or clerk thereof, or before any mayor or chief officer of any city or town having a seal, or before a notary public or commissioner of deeds, or any United States ambassador, minister or secretary of legation, or consul, vice-counsel, deputy consul, commercial agent, consular agent in any foreign republic, dominion, state, empire, colony, territory or dependency attested by his official seal, or before any officer authorized by the laws of the place to take acknowledgments of conveyances of real estate, or to administer oaths and proof of the execution of conveyances of real estate. Certificates must be attested by the official seal, if any, of such court or officer. Otherwise, a certificate shall be added by some ambassador, minister, secretary of legation, consul, vice-consul, deputy consul, commercial agent or consular agent of United States residing in such republic, dominion, state, kingdom, empire, colony, territory or dependency under his official seal, showing that such court or officer was duly elected, appointed or created and acting at the time such acknowledgment or proof was made. *Ibid.*, ch. 30, § 20. In case of foreign acknowledgment a certificate of any consul or United States minister in said country

under his official seal that the deed, conveyance or power of attorney is executed in conformance with such foreign law, shall be deemed and taken as *prima facie* evidence thereof, provided that any other legal mode of proving that the same is executed in conformity with such foreign law may be resorted to in any court in which the question of such execution or acknowledgment may arise. *Ibid.*, ch. 30, § 22. The officer taking the acknowledgment must know the person to be the real person who and in whose name such acknowledgment is proposed to be made or he shall be proved to be such by a credible witness and the certificate shall state that such person was personally known to him to be the person whose name is subscribed to such deed or writing as having executed the same, or that he was proved to be such by a credible witness, naming him, and on taking proof by the testimony of any subscribing witness, the officer shall ascertain that the person who offers to prove the same is a subscribing witness either from his own knowledge or from the testimony of a credible witness, and if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing is the real person who executed the same and that the witness subscribed his name as such in his presence and at his request, the judge or officer shall grant his certificate stating that the person testifying as a subscribing witness was personally known to him to be the person whose name appears subscribed to such deed as a witness of the execution thereof, or that he was proved to be such by a credible witness [naming him] and stating the proof made by him; and wherever a grantor or person executing such deed or writing and the subscribing witnesses are deceased or cannot be had, the judge or officer may take proof of the handwriting of such deceased party and subscribing witness or witnesses [if any], and the examination of a competent and credible witness who shall state on oath or affirmation that he personally knew the person whose handwriting he is called to prove and well knew his signature [stating his means of knowledge], and that he believes the name of such person subscribed to such deed or writing as party or witness [as the case may be], was thereto subscribed by such person; and when the handwriting of the grantor or person executing such deed or writing and of one subscribing witness [if any there be], shall have been proved as aforesaid or by proof of signature of grantor when there is no subscribing witness, the judge or officer shall grant a certificate thereof stating the proof aforesaid. *Ibid.*, ch. 30, § 24.

5. Forms.

58. Acknowledgment.

(*Ibid.*, ch. 30, §§ 11, 26, 27.)

STATE OF [name of state]. }
 County of [name of county]. }

I [here give name of officer and his official title], do hereby certify that [name of grantor, and if acknowledged by wife, her name, and add "his wife"] personally known to me to be the same person whose name is [or are] subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he [she or they] signed, sealed and delivered the said instrument as his [her or their] free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and [private or official, as the case may be], seal this [day of the month] day of [month], A. D. [year].

[Signature of officer.] [SEAL.]

59. Acknowledgment of Chattel Mortgage.

By ch. 95, § 2, of the Revised Statutes of 1908, the following form is prescribed for acknowledgments of chattel mortgages:

This [*name of instrument*] was acknowledged before me by [*name of grantor*], [*when the acknowledgment is made of a resident, insert the words "and entered by me"*], this day of , 19 .

WITNESS my hand and seal.

[*Name of officer.*] [SEAL.]

If the acknowledgment is by a resident of this state, it may be made before a justice of the peace or the county judge of the county where the mortgagor resides or before the clerk or any deputy clerk of any municipal court in such county, or if the mortgagor is not a resident of the state at the time of making the acknowledgment, then before any officer authorized by law to take acknowledgments of deeds, but in counties having a population of more than 200,000 such instruments, if the mortgagor is a resident of the state at the time of making the acknowledgment, shall be acknowledged before a justice of the peace of the town or precinct where the mortgagor resides, or if there be no justice of the peace in such town or precinct, it may be acknowledged before the clerk or any deputy clerk of the municipal court in the district in which the mortgagor resides, or if there be no such clerk or deputy, before the county judge of the county in which the mortgagor resides. *Ibid.*, ch. 95, § 2. If the acknowledgment is by a resident of this state, the justice of the peace, clerk or deputy clerk of the municipal court or county judge shall enter in his docket or in some book kept for that purpose, a memorandum thereof substantially as follows:

60. Memorandum of Filing Chattel Mortgage.

A. B. [*name of mortgagor*] to C. D. [*name of mortgagee*]; mortgage of [*here insert description of the property as in the mortgage*].

Acknowledged this day of , 19 .

Ibid., ch. 95, § 3.

INDIANA.

1. *Seal.*—The use of a seal or scroll was rendered unnecessary by act of 1858. See Revised Statutes of 1908, § 4042. But *ibid.*, § 7484, which is in the statute of frauds, provides that "all conveyances, bonds and powers of attorney for the conveyance of real estate, or any interest therein shall be executed with a seal."

2. *Witnesses.*—Not necessary. *Ibid.*, § 3947.

3. *Husband and wife.*—No separate acknowledgment required. *Ibid.*, § 3971. Any married woman over eighteen and under twenty-one years of age may convey her right in and to lands of her husband, sold and conveyed by him, by executing and acknowledging such conveyance, if her father [*or, if none, then the mother*] shall declare before the officer taking the acknowledgment that he or she believes that such conveyance is for the benefit of such married woman, and that it would be prejudicated to her and her husband to be prevented from disposing of the land; which declaration, with the name of such father or mother, shall be inserted as a part of the officer's certificate. *Ibid.*, § 3972. Such married woman who has neither father nor mother living, may join with her husband in the conveyance of any real estate belonging to the latter with the consent of the judge of the circuit court of the judicial district where such husband and wife reside. §§ 3973–3975. By §§ 3977, 3978, (in force Feb. 26, 1907) it is provided that any married woman under twenty-one years of age, her husband being of full age, may convey or mortgage her separate estate or any interest therein, etc., with the consent of the judge of the circuit court of the judicial circuit

where such married woman and her husband reside, providing the husband joins in the conveyance or mortgage. But by § 3979 (in force Sept. 19, 1881) a wife may in some cases disaffirm her act upon arriving at legal age. Any married woman may join with her husband in the conveyance of his lands. *Ibid.*, § 3976. And the joint deed of husband and wife shall be sufficient to convey the lands of the wife. *Ibid.*, § 3952.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: To entitle any conveyance, etc., to be recorded, it must be acknowledged by the grantor or proved before any judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public, mayor of a city in this or any other state, a commissioner of this state residing in another state, or before a minister, charge d'affaires, or consul of the United States in a foreign country. *Ibid.*, § 3965.

When any conveyance, mortgage, or other instrument required to be recorded is acknowledged in any county in this state other than the one in which the same is required to be recorded, the acknowledgment shall be certified by the clerk of the circuit court of the county in which such officer resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, if attested by such official seal, shall be sufficient without such certificate. *Ibid.*, § 3966.

(b) To entitle to record, in this state, conveyances out of this state and within the United States, the same must be certified by the clerk of any court of record of the county in which the officer receiving the acknowledgment resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, attested by his official seal, shall be sufficient without such certificate. *Ibid.*, § 3967.

All deeds may be proved according to the rules of common law, before any officer authorized to take acknowledgments, and being so proved, shall be entitled to record. *Ibid.*, § 3968.

(c) An acknowledgment of any conveyance in a foreign country, as hereinbefore provided, requires no certificate other than the official seal of the officer taking such acknowledgment. *Ibid.*, § 3969.

When conveyances, etc., are executed in a foreign country, they must be acknowledged by the grantor or person executing the same, or proved before any minister, charge d'affaires, or consul of the United States in such foreign country, or before any officer of such country, who, by the laws thereof, is authorized to take acknowledgments or proof of conveyances; and if such acknowledgment or proof is in the English language, and attested by the official seal of such officer, it shall be sufficient to admit such instrument to record; but if in some other language or not attested by such official seal, then such instrument must be accompanied by a certificate of an officer of the United States, as aforesaid, to the effect that it is duly executed according to the laws of such foreign country; that the officer certifying to the acknowledgment or proof had legal authority so to do, and the meaning of his certificate, if the same is made in a foreign language. *Ibid.*, § 3970.

Where by law the certificate of the clerk of the proper county is required to accompany the acknowledgment, the said certificate shall set forth that the officer before whom such acknowledgment was taken was, at the time, lawfully acting as such, and that his signature to the certificate of acknowledgment is genuine.

Wherever, before any public officer duly authorized to receive acknowledgment of deeds, the grantor of any deed shall sign the same with his or her mark (and also in all other cases in which the said public officer shall have good cause to believe that the contents and purport of said deed are not fully known to the grantor thereof), it shall be the duty of the said public officer, before signature, fully to explain to him or her the contents and purport of the said deed. But the failure of the said officer so to do shall not affect the validity of any deed. *Ibid.*, § 3983.

5. *Forms.*—*Ibid.*, § 3982.

61. Acknowledgment.

STATE OF INDIANA, }
 County of , } ss.

Before me, E. F. [a judge or justice, as the case may be], in and for said county, this day of , A. B. acknowledged the execution of the annexed deed [or mortgage, as the case may be.]

Witness my hand and seal.

[Seal]

My commissions expires 19 .

But the foregoing, "or any form substantially the same, shall be a good and sufficient form of acknowledgment of any deed or mortgage."

IOWA.

1. *Seal*.—Use of private seals except those of corporations abolished. Code of 1897, § 3068.

2. *Witnesses*.—Not required. *Ibid.*, § 2926.

3. *Husband and wife*.—A married woman may convey or encumber any real estate and control or contract with reference thereto to the same extent and in the same manner as other persons. *Ibid.*, § 2919. Either conveyance made by a husband and wife shall be sufficient to pass any and all right of theirs in the property conveyed unless the contrary appears on the face of the conveyance. *Ibid.*, § 2920. Husband and wife must join in conveyance or incumbrance of homestead. *Ibid.*, § 2974. Common-law estate of dower was abolished by the Code of 1873, but it established another estate in its place with very much the same rights.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Before a court having a seal or a judge or clerk thereof, or a county auditor or his deputy, or a justice of the peace within the county, or notary public within the county of his appointment, or in an adjoining county in which he has filed a certified copy of his certificate of appointment. Code Supplement, 1907, § 2942.

(b) Without the state and within the United States: A judge of some court of record or officer holding the seal thereof, commissioner appointed by the governor, notary public or justice of the peace, and when before a judge or justice of the peace a certificate under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which such acknowledgment was taken, under the seal of his office, of the official character of said judge or justice and of the genuineness of his signature shall accompany said certificate of acknowledgment. Code Supplement, 1907, § 2943. The notarial seal which purports to have been affixed to any instrument in writing by any notary public residing elsewhere than in the state of Iowa shall be *prima facie* evidence that the words thereon engraved conform to the requirements of the laws of the place where such certificate purports to have been made. Code Supplement, 1907, § 2943a.

(c) Without the United States: Ambassadors, ministers, secretaries of legation, consuls, vice-consuls, charge d'affaires, consular agents or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. Said instruments may also be acknowledged or proven before any officer of a foreign country authorized by the law thereof to certify to the acknowledgments of written instruments, but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto and of the genuineness of his signature and seal if he have any. Code, 1897, § 2947.

5. *Forms*.

62. Acknowledgment.

(Code of 1897, § 2948.)

STATE OF IOWA, }
 County of , } ss.

On this day of , A. D. 19 , before me [*here state title of the court or person before whom the acknowledgment was made*] personally appeared , personally known to me to be the identical person whose name is affixed to the foregoing deed as grantor [*or proved to me by the testimony of one credible witness, to wit: , to be the identical person whose name is affixed to the foregoing as grantor*], and thereupon acknowledged the execution of the said instrument to be his voluntary act and deed for the purposes therein expressed.

WITNESS my hand and official seal on the date last above written.

The foregoing form is in accordance with § 2948, but § 2958 prescribes the use of the uniform forms referred to and given upon page S 17, ante.

KANSAS.

1. *Seal.*—Private seals, except seals of corporations, abolished. General Statutes of 1905, § 1266.

2. *Witnesses.*—Not necessary. *Ibid.*, § 1276.

3. *Husband and wife.*—Curtesy and dower abolished. *Ibid.*, § 2547. Both must join in conveyance or incumbrance of homestead. *Ibid.*, § 2522 Wife may sell and convey as though sole. No separate acknowledgment. *Ibid.*, §§ 4211, 4212.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: Courts having a seal, or some judge, justice or clerk thereof; justices of the peace, notaries public, county clerks, registers of deeds, mayors or clerks of incorporated cities. *Ibid.*, § 1282.

(b) Without state: Courts of record or clerks or officers holding the seal thereof; commissioners appointed by the governor, notaries public, justices of the peace or United States consuls resident in any foreign port or country. If before justice of the peace, acknowledgment must be accompanied by a certificate of his official character under the hand of the clerk of some court of record to which the seal of such court shall be affixed. Certificate must contain title of court or officer before whom acknowledgment is taken. *Ibid.*, §§ 1283, 1284.

Corporations may convey lands by deeds sealed by the common seal of the corporation and signed by the president, vice-president or presiding member or trustees, and acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands. *Ibid.*, § 1375.

5. *Forms.*

63. Acknowledgment.

(Ibid., § 1284.)

STATE OF KANSAS, }
 County of , } ss.

Be it remembered that on this day of , A. D. 19 , before me [*here give title of court or officer before whom acknowledgment is taken*] personally came , who is personally known to me to be the same person who executed the foregoing instrument in writing, and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal on the day and year first above written.

64. Acknowledgment by Corporation.

(Ibid., § 1375.)

STATE OF KANSAS, }
County of , } ss.

On this day of , 19 , before [here give title of court or officer before whom acknowledgment is taken] personally came , president [or vice-president, presiding member or trustee of the company], to me personally known to be the person whose name is signed to the foregoing instrument as such president [or vice-president, presiding member or trustee] of said company, and thereupon the said duly acknowledged the execution of the said instrument as the act of the said company and that the corporate seal of said company had been affixed to the said instrument and the said instrument had been duly executed by order of the board of directors of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

KENTUCKY.

1. Seal.—Not necessary. Russell's Statutes, 1909, § 1787.

2. Witnesses.—Not required, except to prove deed, when two are necessary. Ibid., § 2071.

3. Husband and wife.—Separate examination of wife necessary, and she must join husband in conveying homestead property or to release dower. A deed of the wife's separate estate must be executed by husband and wife jointly. Ibid., § 2076. Previous to an acknowledgment it shall be the duty of the officer to explain to the married woman the contents and effect of the deed, separately and apart from her husband, and thereupon, if she freely and voluntarily acknowledge the same, and is willing for it to be recorded, the officer shall certify within the state that it was acknowledged before him and when it was done, which shall be evidence that she had been examined separately and apart from her husband and the contents explained to her, and that she had voluntarily acknowledged the instrument and consented that it should be recorded. Where the acknowledgment is taken by an officer residing out of the state the same shall be acknowledged and certified as below. Ibid., §§ 4665, 4661, 4655, 4632, 2077.

4. Officers before whom acknowledgments may be taken:

(a) Within state: Clerks of county courts or notaries public.

(b) Without state and within United States: Clerks or deputy clerks of courts, or judges under seals of their court, notaries public, mayors of cities, secretaries of state, commissioners of deeds.

(c) Without United States: United States ministers or consuls, secretaries of legation, secretary of foreign affairs under his seal of office, judges of superior courts under seal of court. Ibid., §§ 2071-2073.

5. Forms.

65. Acknowledgment Before Clerk of Court.

STATE OF KENTUCKY, }
County of , } set.

I, , clerk of the county court of the county aforesaid, do certify that on this day the foregoing deed was produced to me in the court aforesaid and acknowledged and delivered by to be act and deed, .

WITNESS my hand, this day of , 1 .

..... Clerk C. C.
By..... D. C. C. C.

66. Acknowledgment by Married Woman.

(Ibid., § 2077.)

COMMONWEALTH [or *Kingdom*] of *Set.*,
 County [or *town or city, or department or parish*] of *Set.* }^{ss.}

I, A. B. [*here give his title*], do certify that this instrument of writing from C. D. and wife, E. F. [*or, from E. F., wife of C. D.*] was this day produced to me by the parties [*which was acknowledged by the said C. D. to be his act and deed*], and the contents and effect of the instrument being explained to the said E. F. by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed, and consented that the same might be recorded.

GIVEN under my hand and seal of office, this day of , 19
A. B.
 [Official title.]

[SEAL.]

LOUISIANA.

1. *Seal or scroll.*—Not necessary. Revised Civ. Code, 1900, art. 2240.
2. *Witnesses.*—Two required to prove signature when "private act." and three witnesses if party is blind. Ibid., art. 2234.
3. *Husband and wife.*—Husband must join in conveyance by wife, but wife need not in conveyance of husband. Separate examination required in deeds by wife. Ibid., arts. 122, 126, 129; Const., § 244.
4. *Officers before whom acknowledgments may be taken:*
 - (a) Within state: Notaries public, parish recorders and their deputies.
 - (b) Without state and within United States: By persons authorized to take acknowledgments according to law of state where made, and by commissioners appointed by governor.
 - (c) Without United States: United States ambassadors, ministers, charge d'affaires, secretaries of legation, consuls-general, consuls, vice-consuls, and commercial agents. Ibid., Acts 1894, p. 119; Acts 1896, p. 219.
5. *Forms.*—Are not prescribed by state, but the usual form is as follows:

67. Acknowledgment.

STATE OF LOUISIANA, }
 City and County of , }^{ss.}

Be it known that on this day of , A. D. , before me, a commissioner of deeds [*or, notary public in and for the state of*], for the state of Louisiana, in and for the city and county of , state of , duly commissioned and acting as such, personally came and appeared A. B., of the city and county of , state of , known to me to be the person named in the foregoing instrument, and with the said A. B. also came and appeared C. D. and E. F., two witnesses, both males, of lawful age, and residing in , state of , known to me, and the said A. B. thereupon signed and executed the said instrument in my presence and in the presence of said witnesses, who have also thereunto subscribed their names as such in my presence and in the presence of .

The said A. B. thereupon acknowledged to me, the said commissioner of deeds, in the presence of said two witnesses, that he signed and executed the

said foregoing instrument as his act and deed for the uses and purposes therein set forth.

IN WITNESS, etc.

See also Form —.

[Signature and official title.]

[Add signatures of witnesses.]

MAINE.

1. Seal.—Is necessary.
2. *Witnesses*.—One is customary, but not necessary unless to prove execution of deed. Rev. Stat., 1903, h. 75, §§ 20, 21.
3. *Husband and wife*.—Joint deed of husband and wife conveys their property. No separate examination required. *Ibid.*, ch. 75, §§ 17, 20.
4. *Officers before whom acknowledgments may be taken*:
 - (a) Within state: Justices of the peace, notaries public, women appointed by governor for that purpose.
 - (b) Without state and within United States: Clerks of courts of record having a seal, notaries public, under seal of court or notary.
 - (c) Without United States: United States ministers and consuls, and notaries public, under their seals. *Ibid.*, ch. 75, § 20.
5. *Forms*.—*Ibid.*, ch. 75, § 20.

68. Acknowledgment.

STATE OF MAINE, }
County of } ss.

Then personally appeared the above-named A. B. and B. B., his wife, and severally acknowledged the foregoing instrument to be their free act and deed.

Before me,

A. B.

[Official title.]

MARYLAND.

1. *Seal*.—Necessary. Public General Laws, 1904, art. 21, § 10.
2. *Witnesses*.—One necessary. *Ibid.*
3. *Husband and wife*.—No separate examination. Either may release interest in other's real estate by joining in deed or by separate deed or by power of attorney. *Ibid.*, art. 45 § 12.
4. *Officers before whom acknowledgments may be taken*:
 - (a) Within the state: If acknowledged within the county or city in which real estate or any part of it lies, before justices of the peace for such city or county, a judge of orphans' court of such city or county, a judge of circuit court for the county, a judge of the supreme bench of Baltimore city, notaries public. *Ibid.*, art. 45, § 2.
 - If within the state but out of the county or city in which real estate or any part of it lies, before notary public, judges of the circuit court for the circuit, or judges of the orphans' court for the county in which the grantor may be; judges of the supreme bench of Baltimore city or of the orphans' court of Baltimore city; justices of the peace for the county or city where grantor may make acknowledgment, the official character of the justice being certified to by the clerk of the circuit or superior court under his official seal.
 - (b) Without the state but within the United States: Notaries public, judges of any United States court, judges of any state court or territory having a seal, under such seal, commissioners of Maryland.
 - (c) Without the United States: Any United States minister, consul-general, consul, deputy consul, vice-consul, consular agent or consular officer; notaries public, Maryland commissioners. *Ibid.*, §§ 2-5.
5. *Forms*.—Prescribed by *ibid.*, art. 21 §§ 66-68, but any form of acknowledgment containing in substance such forms shall be sufficient. *Ibid.*, § 69.

69. Acknowledgment Within State.

(Ibid., art. 21, § 66.)

STATE OF MARYLAND, County, to wit:

I hereby certify, that on this day of , in the year , before me, the subscriber [*here insert style of the person taking the acknowledgment*], personally appeared A. B., and acknowledged the foregoing deed to be his act.

[Signature and title.]

70. Acknowledgment by Husband and Wife.

(Ibid., art. 21, § 67.)

STATE OF MARYLAND, County, to wit:

I hereby certify, that on this day of , in the year , before the subscriber [*here insert the official style of the person taking the acknowledgment*] personally appeared A. B. and C. B., his wife, and did each acknowledge the foregoing deed to be their respective act.

[Signature and title.]

71. Acknowledgment Taken Without the State.

(Ibid., art. 21, § 68.)

STATE OF , County, to wit:

[As in form before last, except that the attestation will be as follows:]
IN TESTIMONY WHEREOF, I have caused the seal of the court to be affixed [or, have affixed my official seal], this day of , 19 .
[Seal of court.] [Signature, title and seal.]

72. Acknowledgment by Corporation.STATE OF MARYLAND, }
County of , } ss.

I hereby certify that on this day of , 19 , before the undersigned [*give official title*], personally appeared , attorney of the company, one of the parties mentioned in the foregoing instrument, and acknowledged the same to be the act and deed of said company [*name and official title*].

NOTE.—There must be an affidavit of consideration attached to mortgage. Ibid., art. 21, § 30.

73. Certificate to Mortgage.

STATE OF MARYLAND, County, to wit:

I hereby certify, that on this day of in the year 19 , before me, of the state of Maryland, in and for the county aforesaid, personally appeared , the mortgagor named in the foregoing mortgage, and acknowledged the foregoing mortgage to be act. At the same time also appeared , and made oath in due form of law [*or did solemnly and truly declare and affirm*] that the mortgagee has not required the mortgagor, h agent or attorney, or any person for the said mortgagor to pay the tax

levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor, or any person for during the existence of this mortgage.

MASSACHUSETTS.

1. *Seal*.—A seal is necessary. A scroll is not a seal. For the seal of an individual there should be affixed to the paper a wafer, wax, gum paper or other tenacious substance capable of receiving the impression of a seal. A mere impression on the paper of a deed or a scroll is not sufficient. 10 Allen, 254, 3 Pick. 18. For seal of corporation an impression of the corporate seal is sufficient.

2. *Witnesses*.—Unnecessary except that one is necessary to prove execution. Revised Laws, 1902, ch. 127, §§ 3, 15.

3. *Husband and wife*.—Both must join in respective conveyances, but if the wife is under twenty-one, her father or guardian must join with her. *Ibid.*, ch. 132, §§ 5, 6. Husband may convey as if sole if deserted by wife or if he is living apart from her for justifiable cause and the probate court shall enter a decree so declaring. Acts 1906, ch. 129.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Justices of the peace, special commissioners, notaries public.

(b) Without state and within United States: Justices of the peace, notaries public, magistrates, or commissioners appointed by governor; by officers of any state authorized by laws thereof to take proof and acknowledgments of deeds if accompanied by certificate of secretary of state of the state in which officer resides under seal of such state, or certificate of the clerk of a court of record of such state in the county in which said officer resides or in which he took such proof or acknowledgment, under seal of the court, stating that such officer was at the time of taking such proof or acknowledgment duly authorized thereto in said state and that said secretary of state or clerk of court is well acquainted with his handwriting and verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine.

(c) Without the United States: Justices of the peace, notaries public, magistrates or commissioners appointed by governor, United States ambassadors, ministers, consuls or consular officers accredited to such country. *Ibid.* ch. 127, §§ 8, 19, 20, as amended by 1902, ch. 289. Supp. of 1906, p. 753.

5. *Forms*.—Given in *Ibid.*, §§ 18, 21, but not prescribed.

74. Acknowledgment of Natural Person Acting in His Own Right.

STATE OF _____, }
County of _____, } ss.

On this _____ day of _____, 19____, before me personally appeared A. B. [or A. B. and C. D.], to me known to be the person [or persons] described in and who executed the foregoing instrument and acknowledged that he [or they] executed the same as his [or their] free act and deed.

75. Acknowledgment of a Natural Person Acting by Attorney.

STATE OF _____, }
County of _____, } ss.

On this _____ day of _____, 19____, before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

76. Acknowledgment of Corporation or Joint Stock Association.

STATE OF _____,)
 County of _____,) ss.

On this _____ day of _____, 19____, before me appeared A. B., to me personally known, who, being by me duly sworn [or *affirmed*], did say that he is the president [or *other officer or agent of the corporation or association*] of [describing the corporation or association] and that the seal affixed to said instrument is the corporate seal of said corporation [or *association*], and that said instrument was signed and sealed in behalf of said corporation [or *association*] by authority of its board of directors [or *trustees*], and said A. B. acknowledged said instrument to be the free act and deed of said corporation [or *association*].

If the corporation or association has no corporate seal, the words "the seal affixed to said instrument is the corporate seal of said corporation [or *association*], and that" shall be omitted, and at the end of the affidavit shall be added the words "and that said corporation [or *association*] has no corporate seal." [*Signature and title of the officer taking the acknowledgment.*]

77. Acknowledgment Taken in Another State.

(Ibid., ch. 127, § 21.)

STATE OF _____,)
 County of _____,) ss.

I, _____, clerk of the _____ in and for said county, which court is a court of record having a seal [or, I, _____, *the secretary of state of such state or territory*], do hereby certify that _____, by and before whom the foregoing acknowledgment [or *proof*] was taken, was, at the time of taking the same, a notary public [or *other officer*] residing [or *authorized to act*] in said county, and was duly authorized by the laws of said state [territory or district] to take and certify acknowledgments or proofs of deeds of land in said state [territory or district], and further that I am well acquainted with the handwriting of said _____, and that I verily believe that the signature to said certificate of acknowledgment [or *proof*] is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court [or *state*] this _____ day of _____, 19____.

MICHIGAN.

1. *Seal*.—A scroll or device is sufficient; but want of seal does not invalidate deed. Any device used as a seal is sufficient. Compiled Laws of 1896, §§ 9005, 10417.

2. *Witnesses*.—The presence of two subscribing witnesses is required. Ibid., § 8962.

3. *Husband and wife*.—No separate acknowledgment by wife who must join in her husband's deed or release by separate deed expressing her intent to bar her right of dower. No separate acknowledgment required. Conveyance or mortgage of homestead requires the signature of the wife, unless the mortgage is a purchase-money mortgage. Ibid., §§ 8930, 8966, 8968, 9021, 10363.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Judges or commissioners of courts of record, notaries public, justices of the peace or masters in chancery.

(b) Without the state and within United States: Acknowledgment or proof may be made according to the laws of the state, territory or district where taken, and may be taken before judges of courts of record, notaries public, justices of the peace, masters in chancery or other officers there authorized to take acknowledgment of deeds, and commissioners appointed by the governor of Michigan. Unless taken before such commissioners, the officer must attach the seal of his office, or, if he have no seal, a certificate of the clerk or other proper certifying officer of a court of record of the county or district, or the secretary of state of the state or territory under seal, that the person whose name is subscribed to the certificate was at the date thereof such officer as he is therein represented to be; that he believes the signature of such person to such certificate of acknowledgment to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district.

(c) Without United States: May be executed and acknowledged according to laws of foreign country, before notaries public, ministers plenipotentiary, extraordinary or resident, charge d'affaires, commissioners or consuls of the United States appointed to reside therein, under the hand of the officer certifying, and if before a notary public, with his seal of office. A deed executed in a foreign country, executed in the presence of two subscribing witnesses, is sufficient. *Ibid.*, §§ 8962, 8963, 8965.

5. *Forms.*—May use forms of acknowledgment formerly used, or those prescribed by uniform act, as follows (*Ibid.*, §§ 9020-9023): Begin in all cases by a caption specifying the state and place where the acknowledgment is made. In all cases add the signature and title of the officer taking the acknowledgment.

78. Acknowledgment in the Case of Natural Persons Acting in Their Own Right.

[*Caption or venue.*]

On this day of , 19 , before me personally appeared A. B. [or, A. B. and C. D.], to me known to be the person [or, persons] described in and who executed the foregoing instrument, and acknowledged that he [or, they] executed the same as his [or, their] free act and deed.

When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same, she may be described in the acknowledgment as his wife; but in all other respects her acknowledgment may be taken and certified as if she were sole, unless a separate examination in respect to the execution of any release of dower, or other instrument affecting real estate, be required by statute.

79. Acknowledgment in the Case of Natural Persons Acting by Attorney.

[*Caption or venue.*]

On this day of , 19 , before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same, as the free act and deed of said C. D.

80. Acknowledgment in the Case of Corporations or Joint Stock Associations.

[*Caption or venue.*]

On this day of , 19 , before me appeared A. B., to me personally known, who, being by me duly sworn [or, affirmed], did say that he is the president [or other officer or agent] of the corporation [or, association]

of [describing the corporation or association], and that the seal affixed to said instrument is the corporate seal of said corporation [or, association] and that said instrument was signed and sealed in behalf of said corporation [or, association] by authority of its board of directors [or, trustees], and said A. B. acknowledged said instrument to be the free act and deed of said corporation [or, association]. In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [or, association], and that," and add, after the words "or trustees" on next to the last line, the words "and that said corporation [or, association] has no corporate seal."

81. Form of Proof of Authentication.

The following form of authentication of the certificate of acknowledgment of a deed or other written instrument when taken without the state and within any other state, territory or district of the United States, or any form substantially in compliance with the foregoing provisions of this act, may be used.

[Caption or venue.]

I, _____, clerk of the _____, in and for said county, which court is a court of record having a seal [or, I, _____, the secretary of state of such state or territory], do hereby certify that _____, by and before whom the foregoing acknowledgment [or, proof] was taken, was, at the time of taking the same, a notary public [or other officer] residing [or, authorized to act] in said county, and was duly authorized by the laws of said state [territory, or, district] to take and certify acknowledgments or proofs of deeds of land in said state [territory, or, district], and further that I am well acquainted with the handwriting of said _____, and that I verily believe that the signature to said certificate of acknowledgment [or, proof] is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court [or, state], this _____ day of _____, 19 _____.

MINNESOTA.

1. *Seal*.—Private but not corporate seals abolished. Revised Laws, 1905, § 2652.

2. *Witnesses*.—Two subscribing witnesses necessary except in deeds executed outside of the state according to laws of state and certified as stated below. Such foreign deeds may be executed before two witnesses. *Ibid.*, § 3346.

3. *Husband and wife*.—By joint deed may convey real estate of either. Wife by separate deed may release her dower in lands of former deceased husband. Real estate of wife can be conveyed only by deed in which husband joins. Her deeds good notwithstanding her minority. *Ibid.*, §§ 3335, 3607. Three years after husband or wife had been adjudged insane or incompetent, the other may convey his or her property alone with consent of insane party's guardian, but for conveyance of homestead, guardian must be authorized by probate court. *Ibid.*, § 3338. No separate examination required. *Ibid.*, § 2686. In certificate of acknowledgment they must be described as husband and wife if they acknowledge together, and if they acknowledge separately they must be described as the spouse of the other. *Ibid.*, § 2686.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Members of legislature so long as they remain such and continue to reside in the district from which they were elected, but they shall receive no fee or compensation for so doing; judges, clerks and deputy

clerks of all courts of record residing within the state, including United States circuit and district courts and resident United States commissioners; notaries public, justices of the peace, clerks or recorders of towns, villages boroughs and cities; court commissioners, registers of deeds, county auditors and their deputies, and county commissioners, all within their respective counties. In case of notaries public, must state when commission expires. *Ibid.*, § 2687; Supp. 1909, § 148.

(b) Without state and within United States: Judges or justices of United States supreme, circuit or district courts, or of courts of record of any state, territory or district therein; clerks and deputy clerks of said courts, notaries public, justices of the peace, commissioners appointed by the governor, but acknowledgment must be taken within the place or district for which such officer was chosen or to which the jurisdiction or the court of which the is an officer shall extend. *Ibid.*, § 2688.

If such certificate be signed by a commissioner appointed by the governor or by a notary public, clerk of court or other officer having a seal of office, he must affix seal, but no other authentication shall be required. If by an officer appointed by the governor of such other state and having no official seal, certificate must be accompanied by declaration of the secretary of said state or territory or his assistant or deputy under the seal thereof that at the date of such acknowledgment the person certifying held the office under which he assumed to act; or in lieu thereof the mode of authentication hereinafter prescribed may be used. In all other cases there must be attached to such certificate a declaration of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, and under the seal of said court, that he knows the handwriting of the person who signed the same, that at the time of such purported acknowledgment such person held the office under which he then assumed to act, and that he believes the signature subscribed to said certificate to be genuine. *Ibid.*, § 2689.

(c) Without the United States: Before notaries public or United States ministers, charge d'affaires, commissioners, consuls, commercial agents, or other consular or diplomatic officer appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties. Certificate to be under the official signature and seal of office if there be one. *Ibid.*, § 2690.

If acknowledgment taken out of state and in accordance with the laws of the place of execution, that fact must be proved if within United States by certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken under the seal of said court or by the secretary of the state or territory under the seal thereof. If in a foreign country by certificates of an officer of the United States, authorized to take acknowledgments therein under his seal of office, if there be one. Any one in United States military or naval service and being in any place not within the boundaries of a state thereof, may acknowledge before any commissioned officer of United States army or navy, which officer shall certify thereto under his official signature and in addition to the other facts required to be stated therein the certificate shall state that the person so acknowledging at the time thereof was employed in such military or naval service there either as an enlisted man or in some other capacity therein named. *Ibid.*, § 2692.

5. *Form.*—Prescribed by *ibid.*, § 2684.

Uniform Act.

82. Acknowledgment.

STATE OF _____)
County of _____ , } ss.:

On this _____ day of _____, 19____, before me personally appeared A. B. [or, A. B. and C. D.], to me known to be the person [or, persons] described

in, and who executed the foregoing instrument, and acknowledged that he [or, they] executed the same as his [or, their] free act and deed.

IN TESTIMONY WHEREOF, I have hereunto affixed my official signature with the seal of my office, the day and year first above written.

83. Acknowledgment by Attorney.

STATE OF _____ }
County of _____ , } ss.

On this _____ day of _____, 19____, before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of C. D.

IN TESTIMONY WHEREOF, I have hereunto affixed my official signature with seal of my office, the day and year first above written.

84. Acknowledgment by Corporation or Joint Stock Association.

STATE OF _____ }
County of _____ , } ss.

On this _____ day of _____, 19____, before me appeared A. B., to me personally known, who, being by me duly sworn [or, affirmed], did say that he is the president [or other officer or agent] of [name of the corporation or association]; that the seal affixed to the foregoing instrument is the corporate seal of said corporation [or, association], [or, if it have no seal, that said corporation or association has no corporate seal], and that said instrument was executed in behalf of said corporation [or, association] by authority of its board of directors [or, trustees]; and said A. B. acknowledged said instrument to be the free act and deed of said corporation [or, association].

In case of acknowledgment before a member of legislature, the form of his official certificate shall be: Ibid., § 2687.

"A. B., representative [or, senator] _____ district. My term expires January 1, 19____."

In case of notary public, add to certificate but disconnected with seal, the words "My commission expires _____, 19____."

MISSISSIPPI.

1. *Seal*.—Not necessary except as to corporations. Code of 1906, § 4631.

2. *Witnesses*.—Not required if there be acknowledgment. Ibid., § 2784.

3. *Husband and wife*.—Separate examination of wife not necessary. Coverture, dower and curtesy abolished. Ibid., §§ 2517, 2519.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Any judge of a United States court, judges of supreme court or circuit court, chancellors, clerks of courts of record, or a notary public, who shall certify such acknowledgment under his seal, or justices of the peace, police justices, mayors of any city, town or village, or member of the board of supervisors, whether the property conveyed be within his county or not.

(b) Without state and within United States: Any judge of United States supreme court, or United States circuit or district judge, any other United States judge, and any judge or justice of the supreme or superior court of any such state or territory, justices of the peace whose official character shall be certified under the seal of some court of record in their counties, commissioners appointed by governor, notaries public or clerks of court of record having seal of office.

(c) Without United States: Courts of records, mayors or chief magistrates of any city, borough or corporation, commissioners appointed by governor, ambassadors, U. S. foreign ministers, secretaries of legation, or consuls, but certificate must show that party or party and witness were identified before the officer, and that the party acknowledged the execution of the instrument or that the execution was duly proved by the witness. *Ibid.*, §§ 2798, 2800, 2801.

5. *Forms*.—Prescribed by *ibid.*, § 2799, as follows:

[*Begin in all cases by a caption specifying the state and county, and it would be well to state the place where the acknowledgment is taken.*]

85. Acknowledgment in the case of natural persons acting in their own right.

[*Venue.*]

“Personally appeared before me, _____, a judge of the supreme court of said state [or, a judge of the circuit court, chancellor, clerk of the court of the county of _____, or, a justice of the peace of the county of _____, or, a member of the board of supervisors of the county of _____, as the case may be], the within-named A. B., who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

“GIVEN UNDER MY HAND, this the _____ day of _____, A. D. _____.”

86. Proof by Subscribing Witness.

And in case the proof of execution of the instrument be made by a subscribing witness, follow the above form to and including the word “appeared,” and then as follows, to-wit:

“C. D., one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposes and saith that he saw the within [or, above] named A. D., whose name is subscribed thereto, sign and deliver the same to the said E. F. [or, that he heard the said A. B. acknowledge that he signed and delivered the same to the said E. F.]; that he, this affiant, subscribed his name as a witness thereto in the presence of the said A. B.”

[*In all cases add signature and title of the officer taking the acknowledgment; and if he have an official seal, affix it.*]

Directions for Married Woman's Acknowledgment.

When a married woman unites with her husband in the execution of an instrument, and acknowledges the same in one of the forms above sanctioned, she should be described in the acknowledgment as his wife; but in all other respects, and when she executes any instrument affecting her separate property, real or personal, her acknowledgment shall be taken and certified as if she were sole; and a separate examination of a married woman in respect to the execution of any instrument affecting real estate or other property shall not be required, nor shall the failure to describe her as the wife of a grantor affect the acknowledgment.

MISSOURI.

1. *Seal*.—Private seal except the seals of corporations abolished. Annotated Statutes, 1906, § 893.

2. *Witnesses*.—Not required. *Ibid.*, § 900.

3. *Husband and wife*.—Husband and wife may convey the real estate of the wife and the wife may relinquish her dower in the real estate of her husband by their joint deed acknowledged and certified. *Ibid.*, § 901. A joint instru-

ment is necessary to convey, mortgage, alienate or otherwise dispose of homestead or any part thereof. *Ibid.*, § 3616. No separate acknowledgment required but wife shall join in a joint deed with her husband. She shall be described in the acknowledgment as his wife. *Ibid.*, § 913.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: By court having seal, or some judge, justice or clerk thereof; notary public or justice of the peace of the county in which the real estate is situated.

(b) Without the state and within the United States: Notary public, court of United States or of any state or territory having a seal, or by clerk of any such court or commissioner appointed by governor.

(c) Without the United States: Any court of any state, kingdom or empire having a seal, or the mayor or chief officer of any city or town having an official seal, or by any United States minister or consular officer or by notary public having a seal. *Ibid.*, § 908.

Instruments executed in foreign country may be in language of that country if accompanied by sworn translation in English. *Ibid.*, § 909. Person offering to make acknowledgment must be known personally to at least one judge of the court or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, and the certificate must so state, or shall be proved to be such by at least two credible witnesses. *Ibid.*, §§ 912, 913.

5. *Forms.*—Prescribed by uniform act. *Ibid.*, § 913. [*Sec ante, Forms Nos. 3-7, but the following forms are in common use.*]

87. Acknowledgment by Husband and Wife.

STATE OF MISSOURI, }
of , } ss.:

On this day of , 19 , before me personally appeared , and , his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in , the day and year first above written.

My term expires , 19 .

Notary Public.

88. Acknowledgment.

STATE OF MISSOURI, }
of , } ss.:

On this day of , 19 , before me personally appeared , to me known to be the person described in and who executed the foregoing instrument, and acknowledged that executed the same as free act and deed. And the said further declare to be single and unmarried.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in , the day and year first above written.

My term expires , 19 .

Notary Public.

MONTANA.

1. *Seal.*—Not necessary. Revised Codes, 1907, § 5023.

2. *Witnesses.*—Not necessary. *Ibid.*, § 4612.

3. *Husband and wife.*—Married woman may convey as if unmarried and may acknowledge in same manner. *Ibid.*, §§ 4660, 4661. Separate examina-

tion not necessary. Homestead of married person cannot be conveyed or incumbered without joint deed and acknowledgment. *Ibid.*, § 4639.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Anywhere within state before justices or clerks of the supreme court or judges of the district court; or within the city, county or district for which the officer was elected or appointed, before clerks of courts of record, county clerks, notaries public, justices of the peace. *Ibid.*, §§ 4654, 4655.

(b) Without the state and within United States: Justices, judges or clerks of any court of record of United States or of any state or territory, or commissioner appointed by governor, notary public, or any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. *Ibid.*, § 1602.

(c) Without the United States: United States ministers, commissioners or charge d'affaires resident and accredited in the country; United States consuls, vice-consuls or consular agents resident in the country; judges of courts of record of the country, commissioners appointed by the governor, notaries public. *Ibid.*, § 4657.

Where any of the above-mentioned officers are authorized by law to appoint a deputy, the acknowledgment may be taken by such deputy in the name of his principal. *Ibid.*, § 4658.

5. *Forms.*—Prescribed by *ibid.*, §§ 4663, 4664, 4666.

89. Acknowledgment.

(*Ibid.*, § 4663.)

STATE OF , }
County of , } ss.:

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [or, proved to me on oath of], to be the person whose name is subscribed to the within instrument, and acknowledged to me that he [or, they] executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[*Signature and official title.*]

The acknowledgment by a married woman should be in the last preceding form. *Ibid.*, § 4665.

90. Acknowledgment by Corporation.

(*Ibid.*, § 4664.)

STATE OF , }
County of , } ss.:

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [or, proved to me on the oath of], to be the president [or, secretary] of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[*Signature and official title.*]

91. Acknowledgment by Attorney in Fact.

(Ibid., § 4666.)

STATE OF _____, }
 County of _____, } ss.:

On this _____ day of _____, in the year _____, before me [*here insert the name and quality of the officer*], personally appeared _____, known to men [*or, proved to me on oath of _____*], to be the person whose name is subscribed to the within instrument as the attorney in fact of _____; and acknowledged to me that he subscribed the name of _____ thereto as principal, and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[*Signature and official title.*]

NEBRASKA.

1. *Seal*.—Private seals abolished. Annotated Statutes of 1907, § 11850.

2. *Witnesses*.—One subscribing witness required, and deed must be acknowledged or proved. Ibid., § 10800.

3. *Husband and wife*.—Dower and curtesy abolished. Ibid., § 4904. Married woman may bargain, sell and convey her real and personal property, and enter into any contract with reference to the same in the same manner, to the same extent and with like effect as a married man may in relation to his real and personal property. Ibid., § 5318. Homestead cannot be conveyed or incumbered except by joint deed and acknowledgment of husband and wife. Ibid., § 6278.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Judges or clerks of any court, justices of the peace or notaries public within their territorial jurisdiction. Ibid., §§ 10802, 1853, 9671. Also, county clerks and their deputies, to be attested with the county seal. Ibid., § 9567. Also, deputy clerks of the district and county courts in the names of their principals. Ibid., § 9664. Register of deeds. Ibid., § 9598. Secretary of state. Ibid., § 9529.

(b) Without the state and within the United States: Must be executed and acknowledged or proved either according to the laws of such state, territory or district, or in accordance with the law of this state, any officer authorized by the laws of said state, territory or district to take and certify acknowledgments, or commissioner of deeds appointed by governor. If before justice of the peace must be accompanied by a certificate of his official character, under the hand of the clerk of some court of record to which the seal of such court should be affixed. Ibid., § 10803.

If acknowledgment before commissioners, notaries public or other officers using a seal, no further authentication is required; but in other cases there must be a certificate of the clerk of a court of record or other proper certifying officer of the county, district or state within which acknowledgment was taken, under the seal of his office, showing that person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of such officer to be genuine, and that the deed or other instrument is executed and acknowledged according to the laws of such state, district or territory. Ibid., § 10805.

(c) Without the United States: May be executed according to the laws of such country, and acknowledged before notaries public or United States ministers, plenipotentiary, extraordinary or resident, charge d'affaires, commissioner, commercial agent or consul appointed to reside therein under the officer's hand and, if before a notary public, under his seal. Ibid., § 10803.

5. *Forms*.—Prescribed by Ibid., § 10801.

92. Acknowledgment.

STATE OF NEBRASKA, }
 County of , } ss.:

On this day of , 19 , before me, A. B. [*here insert official title*], within the aforesaid county, personally appeared the above-named C. D., who is personally known to me [*or, upon the oath of , a competent witness for that purpose by me duly sworn, satisfactorily proven*] to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the said instrument to be his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at , the day and year last above written.

93. Acknowledgment by Husband and Wife.

STATE OF NEBRASKA, }
 County of , } ss.:

On this day of , 19 , before me, A. B. [*here insert official title*], within the aforesaid county, personally appeared C. D. and E. D., his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known [*or, upon the oath of , a competent witness for that purpose by me duly sworn, satisfactorily proven*] to be to be the individuals described in, and who executed the said annexed instrument as parties thereto, and they severally acknowledged the same to be their voluntary act and deed, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[SEAL.]

A. B.,
 [*Official title.*]

94. Proof by Subscribing Witness.

STATE OF NEBRASKA, }
 County of , } ss.:

On this day of , 19 , before me, A. B. [*here insert official title*], within the aforesaid county, personally appeared C. D., with whom I am personally acquainted [*or, who was satisfactorily proven to me upon the oath of G. H.*], to be the subscribing witness to the foregoing deed, and the said C. D. having been duly sworn did state upon oath that he resided at , that he set his name to the said deed as a witness, that he knew the grantor in said deed, saw him sign [*or, heard him acknowledge that he signed*] the same.

NEVADA.

1. *Seal.*—Seal or scroll unnecessary. Compiled Laws, 1900, § 2735.
2. *Witnesses.*—Required where party cannot write. The person may make his mark, his name being written near it, and the mark being witnessed by one witness. *Ibid.*, § 2734.
3. *Husband and wife.*—Married woman making acknowledgment must be personally known to officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or be proved to be such by a credible witness. Married woman must be made acquainted with contents of conveyance and acknowledge on an examination apart from and without the hearing of her husband that she executed the same freely and voluntarily,

without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same. *Ibid.*, §§ 2661, 2662.

Husband must join in wife's conveyance. No mortgage or alienation of any kind made for the purpose of securing a loan or indebtedness upon the homestead property shall be valid for any purpose whatsoever, except mechanics', laborers' or vendors' liens, lawfully obtained or for purchase money. But purchase-money mortgage is valid if signature of wife be obtained to same with separate acknowledgment; but if wife is not a resident of this state her signature and acknowledgment thereto shall not be necessary to the validity of any mortgage or alienation before it becomes the homestead of the debtor. *Ibid.*, § 551.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: By judges or clerks of a court having a seal, notaries public or justices of the peace, provided that the acknowledgment before a justice of the peace in any county other than that in which the real estate is situated shall be accompanied with a certificate of clerk of the district court of such county as to the official character of the justice taking such proof or acknowledgment and the authenticity of his signature.

(b) Without state and within United States: Judges or clerks of the courts of United States or of any state or territory having a seal under such seal; commissioners appointed by government of this state for that purpose; justices of the peace of any county, accompanied with a certificate of the clerk of a court of record of the county, having a seal, as to the official character of the justice and the authenticity of his signature.

(c) Without the United States: Judges or clerks of any court of any state, kingdom or empire, having a seal, under such seal; notaries public or any United States minister, commissioner or consul appointed to reside therein.

If any officer named above have seal, he must add the seal to his certificate.

5. *Forms.*—Prescribed by statute. *Ibid.*, §§ 2647, 2648. But in all cases of acknowledgments of non-residents in accordance with the laws of the state or territory where the grantor resides, such certificate shall have the same force and effect as though it contained the form of language prescribed below. *Ibid.*, § 2647.

95. **Acknowledgment.**

(*Ibid.*, § 2647.)

STATE OF NEVADA, }
County of , } ss.:

On this day of , A. D. , personally appeared before me, a notary public [*or, judge, or other officer, as the case may be*], in and for said county, A. B., known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[SEAL.]

[*Signature and title.*]

96. **Acknowledgment Where Grantor Is Unknown to Officer.**

(*Ibid.*, § 2648.)

STATE OF NEVADA, }
County of , } ss.:

On this day of , A. D. , personally appeared before me, a notary public [*or, judge, or other officer, as the case may be*], in and for the said county, A. B., satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of C. D., a competent

and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

[SEAL.]

E. F.,
[Official title.]

97. Acknowledgment by Husband and Wife.

(Ibid., §§ 2661, 2662.)

STATE OF NEVADA, }
County of , } ss.:

On this day of , A. D. , personally appeared before me, A. B. [*here insert official title*], in and for said county, C. D., and E. D., his wife, whose names are subscribed to the annexed instrument, as parties thereto, personally known to me to be the persons whose names are subscribed to and who executed the said annexed instrument, as parties thereto, and each acknowledged to me that they, and each of them, respectively, executed the same freely and voluntarily, and for the uses and purposes therein mentioned. And I further certify, that E. D., wife of said C. D., is personally known to me [*or, proved to me by F. G., a credible witness*], to be the person whose name is subscribed to said conveyance, as a party thereto, and that she was by me made acquainted with the contents of such conveyance, and thereupon acknowledged to me, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same.

IN WITNESS WHEREOF, etc.

[SEAL.]

A. B.,
[Official title.]

Every certificate which substantially conforms to the above form and the provisions of such statutes (§§ 2661, 2662) shall be valid.

NEW HAMPSHIRE.

1. *Seal*.—Necessary. Scroll not sufficient. Public Statutes of 1901, ch. 137, § 3.

2. *Witnesses*.—Two subscribing, necessary. Ibid.

3. *Husband and wife*.—Wife should join husband in conveyance. No separate examination. Ibid., ch. 176, § 3.

4. *Officers before whom acknowledgments may be taken*:

(a) Within or without state: Justices, notaries public, and commissioners.
(b) Without United States: Ministers or consuls of the United States. Ibid.

5. *Forms*.—According to Public Statutes of 1901, ch. 137, § 3.

98. Acknowledgment by Husband and Wife.

STATE OF NEW HAMPSHIRE, }
County of , } ss.:

, 19 . Personally appeared the above-named A. B. and C. B., his wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

[Signature and title.]

NEW JERSEY.

1. *Seal*.—Seal or scroll or other device by way of a seal necessary. Laws 1898, ch. 232, § 20.

2. *Witnesses*.—One witness usual, but not required. *Ibid.*, §§ 22, 23.

3. *Husband and wife*.—Separate examination of wife necessary. Husband and wife must join in their respective conveyances. General Statutes, 1905, p. 854. But where husband is living in a state of separation under final judgment or decree founded upon his application, he may as though unmarried, during the continuance of such separation, convey, mortgage, lease or devise any real property except such as came to him by gift through or from his wife. General Statutes, 1895, p. 2015.

Any married woman living separate from her husband under final judgment or decree founded upon her application, may, as though sole, convey, mortgage, lease or devise any real property or right therein, except such as came to her by gift through or from her said husband. *Ibid.*, p. 2016.

Homestead property can only be sold, encumbered or leased for more than one year by deed of both husband and wife, duly acknowledged, and provided that consideration paid for the same be its full, fair value and the sum of \$1,000 thereof be actually used in the purchase of other lands and buildings declared to be a homestead in the manner herein provided, and the title of such purchaser shall not be good until such purchase money is so invested; or, where such householder has removed out of the state, the homestead cannot be rented or leased for any time without consent of wife. *Ibid.*, p. 2998.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Chancellor, one of the justices of the supreme court, one of the masters of chancery, an attorney at law, a judge of common pleas of any county, commissioner of deeds appointed for any county, clerk of court of common pleas of any county, a deputy county clerk, a surrogate or deputy surrogate of any county, a register of deeds of any county, whether such officer was or is appointed for, or whether he was or is in the county where the lands are situated, or where such acknowledgment was or is taken, or not, such officer having first made known the contents thereof to such party making such acknowledgment and being also satisfied that such party is the grantor in such deed or instrument, of all which the said officer shall make his certificate on, under, or annexed to said deed or instrument, or if it shall have been or shall be proved by one or more of the subscribing witnesses to it, such witness or witnesses then having happened or happening to be anywhere in this state, whether residing here or elsewhere, that such party signed, sealed and delivered it as his voluntary act and deed, before any one of the above-named officers then having been or being anywhere in this state, and if a certificate of such proof signed by such officer shall be written upon, or under, or be annexed to such deed or instrument, then every such deed or instrument shall be received in evidence in any court of this state, as if the same were then and there produced and proved. Laws 1898, ch. 232, § 22, as amended by Laws 1906, ch. 247.

But conveyances made by a sheriff or other officer or auditor in attachment, in pursuance of a judgment, decree, execution or order of the court may be recorded without acknowledgment. Laws 1904, ch. 43.

(b) Without the state and within the United States: Chief justice or associate justice of United States supreme court, master of chancery of New Jersey, United States circuit or district judge, judges or justices of the supreme or superior courts or chancellor of any state or territory or District of Columbia, or New Jersey commissioners of deeds, when certified under the official seal of such commissioner; mayors or other chief magistrates of any city, borough or corporation duly certified under the seal of such city, borough or corporation. All of the foregoing officers then having been or being anywhere within the circuit, district, state, territory, city, borough or corporation for which he was or is appointed; or before and by any judge of any court of common pleas, having been or being within the county or district in or for which he was or is such judge, duly certified that he was or is such judge under the great seal of such state or under the seal of the county court of the county or district in which it is made and in and for which he was or is

such judge, or before and by any officer of a state, territory or District of Columbia then authorized by the laws of such state, territory or district to take proofs and acknowledgments of deeds of lands lying and being in such state, territory or district, provided such certificate of acknowledgment is accompanied by a certificate under the great seal of such state, territory or district, or under the seal of some court of record of the county in which it was or shall be made, that the officer before whom such acknowledgment or proof was or shall be made was at the time of the taking of such proof or acknowledgment authorized by the laws of such state, territory or district to take the acknowledgments and proofs of deeds or conveyances for lands, tenements or hereditaments in such state, territory or district. Laws 1898, ch. 232, § 23.

(c) Without the United States: Any New Jersey master of chancery, United States public ambassador, minister, consul, vice-consul, consular agent, charge d'affaires or other representative of United States for the time being, to or at any such foreign kingdom, state, nation or colony, or by or before any court of law thereof, notaries public, mayors or other chief magistrates of cities, boroughs or corporations certified in such cases by such court of law, notary public, mayor or chief magistrate in the manner in which such acts are usually authenticated by them. *Ibid.*, § 24.

4. *Forms.*—According to General Statutes, 1895, p. 853.

99. Acknowledgment by Husband and Wife.

STATE OF NEW JERSEY, }
County of , } ss.

On this day of , in the year 19 , personally appeared before me, A. B. [*here insert official title*], C. D., and E. D., his wife, who, I am satisfied, are the grantors mentioned in the above deed of conveyance; and I having first made known to them the contents thereof, they did severally duly acknowledge that they signed, sealed and delivered the same as their voluntary act and deed; and the said E. D., being of full age, on private examination apart from her husband, before me, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, dread or compulsion of her said husband.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this
day of , .

[SEAL.]

A. B.,
[*Official title.*]

100. Acknowledgment by Corporation.

(Revision of 1877, p. 157.)

STATE OF NEW JERSEY, }
County of , } ss.

I, A. B. [*here insert official title*], do hereby certify, that on the day of , in the year one thousand nine hundred and , in the county of , aforesaid, personally appeared C. D., with whom I am personally acquainted, and whom I know to be the subscribing witness to the execution of the foregoing deed [*or, instrument*], and who, being duly sworn by me, did depose and say, that he subscribed his name to the foregoing deed [*or, instrument*], as a subscribing witness, on the day that the same bears date, and being well acquainted with the common seal of the said [*name corporation or association*], knows that the same was and is thereto set and that

the said company did then and there sign and deliver the said deed [or, instrument] as their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto affixed my hand seal, this day of , .

[SEAL.]

A. B.,
[Official title.]

NEW MEXICO.

1. *Seal*.— Seal or scroll except corporate seal abolished. Laws 1901, ch. 62, § 11.

2. *Witnesses*.— Not required. *Ibid.*, § 18.

3. *Husband and wife*.— Curtesy and dower abolished. Laws of 1907, ch. 37, § 17. Neither has any interest in the property of the other. Each may convey alone all property owned by them before marriage and that acquired afterward by gift, bequest, devise or descent, with the rents, issues and profits thereof. *Ibid.*, §§ 4, 8, 9. All other property acquired after marriage by either husband or wife, or both, is community property, but wherever any property is conveyed to a married woman by an instrument in writing, the presumption is that title is thereby vested in her as her separate property. *Ibid.*, § 10. Husband has management and control of the community property and may dispose of it, except by will, as his separate estate, but cannot make a gift, or convey without valuable consideration, unless the wife in writing consent. No sale, conveyance or incumbrance of homestead then and there being occupied and used as a home by the husband or wife, or which has been declared to be such by written instrument signed and acknowledged by husband and wife, and recorded in the recorder's office of the county, or of furniture, furnishings and fittings of the home, or clothing and wearing apparel of wife or minor children, which is community property, can be made without written consent of the wife. *Ibid.*, § 16.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the territory: Clerks of district courts, clerks or judges of probate court, using the probate seal, notary public, justices of the peace. Laws 1901, ch. 62, § 14.

(b) Without the territory and within the United States: Clerks of courts of record having a seal, commissioners of deeds of New Mexico, notaries public having a seal. *Ibid.*, § 15.

(c) Without the United States: United States ministers, commissioners or charge d'affaires, resident and accredited in the country, United States consuls-general, consuls, vice-consuls, deputy consuls or consular agents resident in country, having seal, notaries public having seal. *Ibid.*, § 16.

5. *Forms*.— Of uniform form. Compiled Laws, 1897, §§ 3945, 3946.

In all cases add the signature and title of the officer taking the acknowledgment.

101. Acknowledgment in the Case of Natural Persons Acting in Their Own Right.

TERRITORY OF NEW MEXICO, }
County of . }

On this day of , 19 , before me personally appeared A. B. [or, A. B. and C. D.], to me known to be the person [or, persons] described in and who executed the foregoing instrument, and acknowledged that he [or, they] executed the same as his [or, their] free act and deed.

When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same, she shall be described in the acknowledgment as his wife; but in all other respects her acknowledgment may be taken and certified as if she were sole.

102. Acknowledgment in the Case of Natural Persons Acting by Attorney.

TERRITORY OF NEW MEXICO, }
 County of . }

On this day of , 19 , before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same, as the free act and deed of said C. D.

103. Acknowledgment in the Case of Corporations or Joint Stock Associations.

TERRITORY OF NEW MEXICO, }
 County of . }

On this day of 19 , before me appeared A. B., to me personally known, who, being by me duly sworn [*or, affirmed*], did say that he is the president [*or other officer or agent of the corporation or association*] of [*describing the corporation or association*], and that the seal affixed to said instrument is the corporate seal of said corporation [*or, association*], and that said instrument was signed and sealed in behalf of said corporation [*or, association*] by authority of its board of directors [*or, trustees,*] and said A. B. acknowledged said instrument to be the free act and deed of said corporation [*or, association*].

In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [*or, association*], and that," and add, after the words "or trustees" on second from the last line, the words "and that said corporation [*or, association*] has no corporate seal."

NEW YORK.

1. *Seal*.—Or any of its substitutes, or the word "seal" or the letters "L. S.," necessary. General Construction Law, § 45; Birdseye, C. & G. Cons. Laws, p. 1953.

2. *Witnesses*.—One only necessary to prove conveyance, if not acknowledged. Real Property Law, §§ 243, 291, 304; *Ibid.*, pp. 5057, 5090, 5099.

3. *Husband and wife*.—Wife must join in husband's deed. No separate examination. Real Property Law, §§ 190, 302; *Ibid.*, pp. 5031, 5098.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Justices of the supreme court, at any place within the state, or judges, clerks deputy clerks or special deputy clerks of courts, notaries public, mayors or recorders of cities, justices of the peace, surrogates, special surrogates, special county judges, and commissioners of deeds in the districts in which they are authorized to perform official duties.

(b) Without state and within United States: Judges of the supreme court, circuit courts of appeals, circuit and district courts of the United States, judges of the supreme, superior or circuit state courts, mayors of cities, commissioners appointed for that purpose by the governor, and any officers authorized to take acknowledgments in the several states or territories or District of Columbia.

(c) In Porto Rico, Philippine Islands, Cuba, or any other place under sovereignty, control or protectorate of United States: Before (1) a judge or clerk of a court of record, within his jurisdiction; (2) a mayor or other chief officer of a city, acting in such city; (3) a commissioner appointed

by the governor; (4) an officer of the United States regulars or volunteers of the rank of captain or higher, or of United States navy of the rank of lieutenant or higher, while on duty at the place where the parties are or reside. Certificates of acknowledgments before any officer in subdivisions (1), (2) or (3) must have attached seal of the court or officer if he have a seal, or if he has not a seal, a statement to that effect. The certificate of an army or naval officer shall state his rank, the name of the city or political division where taken, and the fact that he is on duty there, and be authenticated by the United States secretary of war or navy, as the case may be.

(d) Without the United States: Ambassadors, ministers, plenipotentiary or extraordinary or resident, charge d'affaires accredited to the country and residing therein, consul-general, vice-consuls-general, deputy consuls-general, consuls, vice-consuls, deputy consuls, consular or vice-consular agents, commercial or vice-commercial agents of the United States, if residing within the country to which they are appointed, or a secretary of legation at the post, port, place or within the limits of his legation, under seal of office or of the legation or consulate, a commissioner appointed for that purpose by the governor, and acting within his own jurisdiction, persons specially authorized under a commission of supreme court, judges of courts of record and persons authorized to take acknowledgments in Canada, mayors, provosts or chief magistrates of cities and towns of the British empire, or the dominions thereunto belonging, under their hands and the seal of such city or town.

Within the states comprising the Empire of Germany, it may also be made before a judge of a court of record under the seal of such court, or before a notary public under the seal of his office and the seal of the city or town in which he resides. Real Property Law, §§ 298-301, 308. *Ibid.*, pp. 5095-5099, 5101.

Acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence that the person making it is the person described in and who executed the instrument. Proof by subscribing witness must state his own place of residence, and that he knew the person described in and who executed the conveyance. Proof must not be taken unless officer was personally acquainted with witness or has satisfactory evidence that he is the subscribing witness. Real Property Law, §§ 303, 304; *Ibid.*, p. 5099.

An officer taking the acknowledgment or proof of a conveyance must indorse thereupon, or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known, or proved on the taking of such acknowledgment or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

When the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States and without the state, the certificate must also state the day on which, and the town and county or the city in which the same was taken. Real Property Law, §§ 306, 307; *Ibid.*, p. 5100.

Certificates within the state of commissioners of deeds, justices of the peace, or, except as otherwise provided by law, of notaries public, cannot be used outside of the county where officer resides, unless authenticated by certificate of clerk of the same county; but an authentication by the city clerk of New York city of the signature of a commissioner of deeds of that city entitles the acknowledgment to be used in any county within that city. Real Property Law, § 310; *Ibid.*, p. 5102.

Certificates made by commissioners appointed by the governor must be authenticated by the New York secretary of state; of a judge of a court of record of Canada, by the clerk of the court; of an officer of a state of the United States, or of any province or territory of Canada, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, the provincial secretary, deputy provincial secretary or assistant provincial secretary of the province, or commissioner of the territory of Canada, or the clerk, register recorder or prothonotary of the county, city or parish in which the officer making the original

certificate resided, or by the clerk of any court in or of that county, city or parish, having by law a seal. County includes District of Columbia. Real Property Law, § 311; Birdseye C. & G. Cons. Laws, p. 5102.

5. *Forms.*—See Real Property Law, §§ 306-309; Birdseye, C. & G. Cons. Laws, pp. 5100, 5101.

104. Acknowledgment.

STATE OF NEW YORK, }
County of , } ss.

On this day of , 19 , before me personally appeared A. B., to me personally known, and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same for the uses and purposes therein mentioned.

A. B.,
[*Official title.*]

105. Acknowledgment by One of Several Grantors, Known to the Officer.

STATE OF NEW YORK, }
County of , } ss.

On this day of , in the year 19 , before me personally came A. B., to me personally known, and known to me to be one of the individuals described in, and who executed the within [*or, annexed, or, above*] conveyance [*or, instrument*], and acknowledged that he executed the same.

[*Signature and title.*]

106. Acknowledgment by Two or More Grantors, Known to the Officer.

STATE OF NEW YORK, }
County of , } ss.

On this day of , in the year 19 , before me personally came A. B., C. D., and E. F., to me personally known, and known to me to be the individuals described in, and who executed the within [*or, above, or, annexed*] conveyance [*or, instrument*], and severally acknowledged that they executed the same.

[*Signature and title.*]

107. Acknowledgment by a Grantor Not Known to the Officer.

STATE OF NEW YORK, }
County of , } ss.

On this day of , 19 , before me personally came A. B., proven to me satisfactorily to be the individual described in, and who executed the with [*or, above, or, foregoing*] conveyance [*or, instrument*], by the oath of M. N., who being by me duly sworn [*or, affirmed*], did depose and say that he resided in the city of , in the county of ; that he was acquainted with the said A. B., and that he knew him to be the same person described in, and who executed the within conveyance [*or, instrument*]; and thereupon the said A. B. acknowledged before me that he executed the same.

[*Signature and title.*]

108. Acknowledgment by Two Grantors, One Known and One Not Known.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , 19 , before me personally came A. B., to me personally known, and known to me to be one of the individuals described in, and who executed the within [or, above, or, annexed] conveyance [or, instrument]; and also personally came C. D., satisfactorily proven to me to be the other individual [or, one of the other individuals] described in, and who executed the same, by the oath of M. N., who being by me duly sworn [or, affirmed], said that he resided in the town of , in the county of , and that he knew the said C. D. to be one of the individuals described in, and who executed the said conveyance [or, instrument]; and thereupon the said A. B. and C. D. severally acknowledged before me that they executed the same, for the purposes therein mentioned.

[Signature and title.]

109. Acknowledgment by Attorney in Fact, Known to the Officer.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , 19 , before me personally came A. B., the attorney of C. D., to me personally known, and known to me to be the individual described in, and who as such attorney executed the within [or, above, or, annexed] conveyance [or, instrument], and acknowledged that he executed the same as the act and deed of C. D., therein described, by virtue of a power of attorney duly executed by the said C. D., bearing date the day of , in the year 19 [and recorded in the office of the register in and for the city and county of , on the day of , in the year].

[Signature and title.]

110. Acknowledgment by Attorney in Fact.

(Form proposed by consolidators, but not enacted. See Birdseye, C. & G. Cons. Laws, pp. 5096, 5097.)

STATE OF , }
 County of , } ss.

On this day of , in the year , before me personally came , to me personally known to be the person described and appointed attorney in fact in and by a certain power of attorney executed by , bearing date the day of , 19 , and recorded in the office of the register [or, clerk] of the county of , on the day of , 19 , [or, to be recorded in the office of the of the county of , simultaneously with the within instrument], and acknowledged to me that he had executed the within [or, foregoing] instrument as the act of the said .

[Signature and office of officer taking the acknowledgment.]

111. Acknowledgment by Attorney in Fact, Not Known to the Officer.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , 19 , before me personally came A. B., proven satisfactorily to me to be the individual described in, and who executed the within [*or, above, or, annexed*] conveyance [*or, instrument*], as the attorney in fact of C. D., by the oath of M. N., who being by me duly sworn [*or, affirmed*], did depose and say: That he resided in the town of , in the county of ; that he was acquainted with the said A. B., and that he knew him to be the individual described in, and who executed the said conveyance, as the attorney in fact of C. D.; and thereupon the said A. B. acknowledged before me that he executed the same as the act and deed of the said C. D.

[*Signature and title.*]

112. Acknowledgment by a Sheriff, Referee, or Receiver.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , 19 , before me personally came A. B., sheriff of the county of [*or, late sheriff of the county of ; or, referee in the cause within named; or, receiver in, etc.*], to me personally known, and known to me to be the individual described in, and who executed the within [*or, above, or, annexed*] conveyance [*or, instrument*], and acknowledged that he executed the same.

[*Signature and title.*]

113. Acknowledgment by Deputy or Under-Sheriff.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , 19 , before me personally came A. B., personally known to me to be the deputy [*or, under-sheriff*] of C. D., sheriff of the county of , and the individual described in the within [*or, above, or, annexed*] conveyance [*or, instrument*]; and acknowledged that he, as deputy [*or, under-sheriff*] as aforesaid, had executed the same in the name, and as the act and deed of the said sheriff.

[*Signature and title.*]

114. Acknowledgment by Executor or Trustee.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , in the year 19 , before me personally came A. B., the executor of the last will and testament [*or, trustee of the estate*] of C. D., to me personally known to be the individual described in, and who executed the within [*or, above, or annexed*] conveyance [*or, instrument*], and acknowledged that he executed the same as such executor [*or, trustee*] as aforesaid.

[*Signature and title.*]

115. Acknowledgment by Subscribing Witness, Not Known to the Officer.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , in the year 19 , before me personally came M. N. and O. P., and the said O. P., to me personally known, being by me duly sworn, said that he resided in the city of ; that he was acquainted with the said M. N., then present, and knew him to be the same person who was a subscribing witness to the within [or, above, or, annexed] conveyance [or, instrument], which is to me satisfactory evidence thereof; and the said M. N., being duly sworn, said that he resided in the city of ; that he was acquainted with A. B., and knew him to be the person described in, and who executed the said conveyance [or, instrument]; that he saw him execute and deliver the same; and that said A. B. acknowledged to him, the said M. N. [naming the witness], that he executed and delivered the same; and that he, the said M. N., thereupon subscribed his name as a witness thereto.

[Signature and title.]

116. Proof of Deed Executed by Attorney, by Subscribing Witness Known to the Officer.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , in the year 19 , before me personally came M. N., subscribing witness to the within [or, above, or, annexed] conveyance [or, instrument], with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of ; that he was acquainted with A. B., attorney of C. D., and knew him to be the person described in, and who executed the within instrument; that he saw the said A. B. execute and deliver the same; and that he acknowledged to him, the said M. N. [naming witness], that he executed the same, as the act and deed of the said C. D. therein described, by virtue of a power of attorney executed by said C. D., dated the day of , in the year 19 [and recorded in the office of the register of the city of , on the day of , in the year 19], and that he, the said M. N., thereupon subscribed his name as a witness thereto.

[Signature and title.]

117. Acknowledgment by a Grantor, After Attaining Majority, to Confirm a Deed Executed During Minority.

STATE OF NEW YORK, }
 County of , } ss.

On this day of , in the year 19 , before me personally came A. B., to me personally known, and known to me to be the individual described in and who executed the within [or, above, or, annexed] conveyance, and acknowledged that the said conveyance was formerly executed by him when he was an infant, under twenty-one years of age; that he has since arrived at full age, and is desirous of confirming his former execution thereof; and he now acknowledges that he executed the same, as and for his act and deed.

[Signature and title.]

118. Proof Within the State, by Subscribing Witness Known to the Officer.

STATE OF NEW YORK, }
County of , } ss.

On this day of , in the year 19 , before me personally came M. N., subscribing witness to the within [or, above, or, annexed] conveyance [or, instrument], with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of ; that he was acquainted with A. B., and knew him to be the person described in, and who executed the said conveyance [or, instrument]; and that he saw him execute and deliver the same, and that he acknowledged to him, the said M. N. [naming witness], that he executed and delivered the same, and that he, said M. N., thereupon subscribed his name as a witness thereto.

[Signature and title.]

119. Proof of Handwriting, Where the Subscribing Witnesses are Dead.

STATE OF NEW YORK, }
County of , } ss.

On this day of , in the year 19 , before me personally came M. N., to me personally known, who, being by me duly sworn, and the within [or, above, or, annexed] conveyance [or, instrument] being shown to him, did depose and say, that he resided at , in ; that he knew A. B., the person described therein as grantor [or, as a party thereto]; that he had frequently seen him write, and knew his handwriting; and that the name of the said grantor, subscribed to the said conveyance, was in the proper handwriting of the said A. B. And the said M. N. further on his oath said, that he was well acquainted with O. P., one of the subscribing witnesses to the said conveyance, and had frequently seen him write, and knew his handwriting; that the said O. P., at the time of the date of said deed, resided in the city of New York, and has been dead about years; and that the name of the said O. P., deceased, subscribed as a witness to said conveyance, is in his proper handwriting. And the said M. N. further on his oath said, that he was well acquainted with one Q. R., another subscribing witness, who at the date of said conveyance resided in the city of ; that the said Q. R. died at , in the year 19 , and since the date of said conveyance; that he, the said M. N., was not acquainted with the handwriting of the said Q. R. And I hereby certify, that the aforesaid deposition of the said M. N. is to me satisfactory evidence of the death of all the witnesses to the within conveyance, and of the handwriting of O. P., one of the said witnesses, and of the handwriting of A. B., the grantor herein named.

[Signature and title.]

120. Acknowledgment by Corporation.

(Real Property Law, § 309; Birdseye, C. & G. Cons. Laws, p. 5101.)

STATE OF NEW YORK, }
County of , } ss.

On the day of , in the year of , before me personally came , to me known, who, being by me duly sworn, did depose and say, that

he resides in ; that he is the president [or *other officer*] of the [*name of corporation*], the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of the said corporation, and that he signed his name thereto by like order.

[*Signature and office of officer taking acknowledgment.*]

If corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

121. Certificate of County Clerk, When Acknowledged, is to be Used in Another State.

(Birdseye, C. & G. Cons. Laws, p. 5102.)

STATE OF NEW YORK, }
County of , } ss.
Clerk's Office. }

I, A. B., clerk of the said county [and also clerk of the supreme, and county courts, being courts of record therein], do hereby certify, that M. N., whose name is subscribed to the certificate of acknowledgment or proof of the annexed instrument in writing, and indorsed thereon, was, at the time of taking such acknowledgment or proof, a notary public or, [or *other officer*], in and for the city [county aforesaid], dwelling in said county, and duly authorized to take the same. And I do further certify, that I am well acquainted with the handwriting of the said commissioner of deeds [or, notary public], and verily believe that the signature to the said certificate of acknowledgment or proof is genuine; and that the said instrument is executed and acknowledged according to the laws of the state of New York.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal, as county clerk of said county, and clerk of said court, this day of , 19 .

[SEAL.]

A. B.,
Clerk.

All certificates of acknowledgments or proof, made by or before a commissioner of deeds of the city of New York residing in any part therein, shall be authenticated by the city clerk of said city, that the commissioner of deeds was duly appointed and qualified as such, and no other certificate shall be required from any other officer to entitle said conveyance to be read in evidence or recorded in any county or part of a county situated within the limits, confines, or boundaries, of the said city of New York. But this section does not apply to a conveyance executed by an agent for the Holland Land Company or of the Pulteney Estate, duly authorized to convey real property. Real Property Law, § 310; Birdseye C. & G. Cons. Laws, p. 5102.

122. Certificate of Clerk, Etc., Under Section 312 of the Real Property Law.

STATE OF , }
County of , } ss.
Clerk's Office, }

I, A. B. [*here state name and quality of officer*], do hereby certify that M. N., whose name is subscribed to the certificate of acknowledgment or proof

of the foregoing instrument in writing and indorsed thereupon, was at the time of taking the acknowledgment or proof a [state the office and quality of the officer taking the acknowledgment or proof] and duly authorized to take the same. I do further certify that I am acquainted with the handwriting of the said M. N. [or, have compared the signature to said original certificate with that deposited in my office by such officer] and that I verily believe the signature to said original certificate of acknowledgment or proof is genuine. I do further certify that I have compared the impression of the seal affixed thereto with the impression of the seal of the officer who took said acknowledgment or proof deposited in my office and that I verily believe the impression of the seal upon said original certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and my official seal this day of , 19 .

[Signature and title.]

Where an acknowledgment or proof has been taken before a judge of a court of record in Canada, the clerk's certificate must specify that there is such a court, that the judge before whom the acknowledgment or proof was taken was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is the clerk thereof; that he is well acquainted with the handwriting of such judge and verily believes his signature is genuine.

123. Petition for a Subpœna to Compel a Subscribing Witness to Prove the Execution of a Conveyance.

To Hon. M. N., county judge of the county of :

That the petition of Y. Z. respectfully shows that one A. B., executed and delivered to your petitioner [or, W. X., since deceased, and of whom your petitioner is heir or executor, etc.,—or, to W. X., under whom your petitioner claims title to the land hereinafter mentioned] a conveyance of lands situate at , within this state, the execution of which by A. B. has not been acknowledged or proved; and that O. P., who resides at , in said county of , is a witness to the execution of said deed; that said A. B. has died since the execution and delivery of said deed [or, is absent from this state, being now at]; that the execution of the said deed cannot be proved without the evidence of the said O. P.; that your petitioner has applied to the said O. P., and requested him to testify touching the execution of the said deed, and that the said O. P. has refused to appear and testify touching the execution thereof, notwithstanding your petitioner has called on the said O. P., in company with an officer empowered to take the proof of the execution thereof. Wherefore, your petitioner prays that a subpœna be issued requiring such witness to appear and testify before you touching the execution and delivery of said conveyance.

[Signature of petitioner.]

124. Verification of Foregoing.

STATE OF NEW YORK, }
County of , } ss.

A. B., being duly sworn, says that he has read [or, heard read] the foregoing petition subscribed by him, and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters therein

stated to be alleged on information and belief, and as to those matters he believes it to be true. [Signature.]

Sworn to before me, this
day of , 19 .

[Signature and title of officer administering oath.]

125. Subpœna for Subscribing Witness to Appear and Testify.

To O. P., of the town of , county of :

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK, you are hereby summoned to be, and appear before me at my office, in the city of , in the said county, on the day of , at o'clock, in the noon, to testify and give evidence touching the execution of a certain conveyance of real estate, purporting to have been executed by A. B. to Y. Z., to which, as appears by the petition of the said A. B., you are a subscribing witness. Whereof, fail not at your peril.

GIVEN under my hand, this day of , 19 . M. N.
[Official title.]

126. Affidavit of Service of Subpœna.

STATE OF NEW YORK, }
County of , } ss.

H. K., being duly sworn, says, that on the day of , at , in said county, he served the annexed subpœna personally on O. P., to whom it is directed, and that said service was made by exhibiting to said O. P. the said original subpœna and delivering to and leaving with him a copy thereof and paying [or, tendering to him] his fees allowed by law for traveling from his place of residence to and returning from the place where he is required to attend, and for one day's attendance, pursuant to said subpœna, namely, cents for each mile going to the place of attendance, and cents for said attendance, in all amounting to the sum of dollars, and that the person so served was known to him to be the said O. P. H. K.

Sworn to before me, this
day of , 19 .

127. Warrant to Arrest Witness for Neglect to Attend.

To the Sheriff of County, Greeting:

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK, You are hereby commanded forthwith to apprehend and take into your custody, O. P., of your county, and bring him before me, , a county judge of said county [or any other officer authorized to take acknowledgments, etc.], at my office, in the city of , in the county of , to testify and give evidence concerning the execution of a certain conveyance of real estate made by Y. Z. to A. B., to which deed of conveyance the said O. P. is a subscribing witness, as it appears to me of record; the said O. P. having been duly subpœnaed to be and appear before me and to testify and give evidence in regard to the execution of said conveyance, and having neglected and refused to attend in pursuance of said subpœna.

GIVEN under my hand and seal, this day of , 19 .
[SEAL.] [Name and official title of officer.]

128. Commitment of Witness Refusing to Testify.

THE PEOPLE OF THE STATE OF NEW YORK, to any constable of the county of _____, greeting:

WHEREAS, O. P., who resides in the town of _____, and county aforesaid, having been brought before me on a warrant [or, *where the witness appears in pursuance of the subpoena, say:* having this day appeared before me, in pursuance of a subpoena by me issued], requiring him to appear and testify touching the execution of a conveyance of real estate, from A. B. to Y. Z., to which the said O. P. is a subscribing witness, and having, although duly required, refused, without excuse, to answer upon oath, touching the matters aforesaid [or, *if the commitment is made on account of the refusal of the witness to answer a particular question, deemed pertinent by the officer, state it thus:* the following question, touching the execution of the said conveyance (*here set it forth*)]. Now, THEREFORE, you are commanded forthwith to commit and deliver the said O. P. to the sheriff of the said county of _____, who is required to receive the said O. P., and to commit and imprison him in the jail of the said county, there to remain without bail, and without the liberties of the jail, until he shall submit to answer upon oath, as aforesaid, or be discharged according to law.

GIVEN under my hand and seal, this _____ day of _____, 19 _____.

[SEAL.]

[Signature and title.]

129. Oath of the Subscribing Witness.

You do swear in the presence of the ever living God, that you will true answers make to such questions as shall be put to you touching the execution of the deed here shown to you, or,

You do solemnly swear that you will true answer make to such questions as shall be put to you in regard to the execution of the deed of conveyance here shown to you, so help you God.

130. Oath to be Administered to the Person Identifying the Parties or the Subscribing Witnesses.

You do swear in the presence of the ever living God, that you will true answers make to such questions as shall be put to you, touching the identity of the subscribing witnesses [or, of the parties] to this conveyance, or,

You do solemnly swear, that you will make true answers to such questions as shall be put to you in regard to the identity of the subscribing witnesses [or, the parties] to this conveyance, so help you God.

NORTH CAROLINA.

1. *Seal or scroll.*—Required. Revisal, 1908, § 2831.

2. *Witnesses.*—Not required if acknowledged; otherwise, one. *Ibid.*, § 979. But apparently execution of instruments by married woman cannot be proved by subscribing witness. *Ibid.*, § 997.

3. *Husband and wife.*—Husband and wife must join in deed of homestead. See Constitution, art. 10, § 8, appendix, p. 42. Husband and wife must join

in their respective conveyances. Separate examination of wife necessary, but his deed may be registered as against him and shall not affect wife unless privately examined. *Ibid.*, §§ 952, 954.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Justices of the supreme court, judges of superior court, commissioners of affidavits appointed by governor, clerk of supreme court, clerks and deputy clerks of superior courts, clerks of criminal courts, notaries public and justices of the peace.

(b) Without the state whether within the United States or elsewhere: Judges or clerks of courts of record, notaries public, mayors or chief magistrates of incorporated towns or cities, ambassadors, ministers, consuls, vice-consuls, vice-consuls-general or commercial agent of the United States, or justice of the peace of any state or territory of United States, if accompanied by a certificate of clerk of some court of record of the county in which justice of peace resides, that such justice was at the date of certificate an acting justice of the peace of such county and state or territory, and that the genuine signature of such justice of the peace is set to such certificate. Clerk of superior court of any county may issue commission to non-resident commissioner to take acknowledgment and return same to clerk. Any officer taking acknowledgment must add official seal if he has one. *Ibid.*, §§ 989, 990, 991.

5. *Forms.*—Prescribed by statute:

131. Acknowledgment.

(*Ibid.*, § 1002.)

North Carolina, County.

I [*here give the name and his official title*], do hereby certify that [*here give the name of the grantor or maker*] personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and [*where an official seal is required by law*] official seal this day of [*year*].

[OFFICIAL SEAL.]

[*Signature of officer.*]

132. Private Examination of Wife.

(*Ibid.*, § 1003.)

North Carolina, County.

I, [*here give name of the official and his official title*], do hereby certify that [*here give name of the married woman who executed the instrument*], wife of [*here give husband's name*], personally appeared before me this day and acknowledged the due execution of the foregoing [*or, annexed*] instrument; and the said [*here give married woman's name*], being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

WITNESS my hand and [*when an official seal is required by law*] official seal, this [*day of month*], A. D. [*year*].

[OFFICIAL SEAL.]

[*Signature of officer.*]

133. Joint Acknowledgment by Husband and Wife.

(Ibid., § 1004.)

North Carolina, County.

I [here give name of official and his official title], do hereby certify that [here give name of the grantors whose acknowledgment is being taken] personally appeared before me this day and acknowledged the due execution of the foregoing [or, annexed] instrument; and the said [here give name of the married woman or women], wife [or, wives] of [here give name of husband or husbands], being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

WITNESS my hand and [when an official seal is required by law] official seal, this [day of month], A. D. [year.]

[OFFICIAL SEAL.]

[Signature of officer.]

134. Acknowledgment of President or Presiding Member or Trustee and Two Other Members of Corporation.

(Ibid., § 1005.)

North Carolina, County.

This day of , A. D. , personally came before me [here give the name and official title of the officer who signs this certificate], A. B. [here give the name of the subscribing witness], who, being by me duly sworn, says that he knows the common seal of the [here give the name of the corporation], and is also acquainted with C. D., who is the president [or, presiding member, or, trustee], and also with E. F. and G. H., two others members of said corporation; and that he, the said A. B., saw the said president [or, presiding member, or, trustee] and the two said other members sign the said instrument, and saw the said president [or, presiding member, or, trustee] affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence.

WITNESS my hand and [when an official seal is required by law] official seal, this day of , [year.]

[OFFICIAL SEAL.]

[Signature of officer.]

135. Acknowledgment by President or Presiding Member or Trustee, With Attestation of Seal by Secretary or Assistant Secretary.

North Carolina, County.

This day of , A. D. , personally came before me [here give name and official title of the officer who signs the certificate] A. B. [here give the name of the attesting secretary or assistant secretary], who, being by me duly sworn, says that he knows the common seal of [here give the name of the corporation], and is acquainted with C. D., who is the president of said corporation, and that he, the said A. B., is the secretary [or, assistant secretary] of the said corporation, and saw the said president sign the fore-

going [or, annexed] instrument, and saw the said common seal of said corporation affixed to said instrument by said president [or, that he, the said A. B., secretary or assistant secretary as aforesaid, affixed said seal to said instrument], and that he, the said A. B., [signed his name in attestation of the execution of said instrument], in the presence of said president of said corporation.

WITNESS my hand and [when an official seal is required by law] official seal, this the day of [year.]

[OFFICIAL SEAL.]

[Signature of officer.]

136. Acknowledgment by Corporation.

North Carolina, County.

This is to certify that on the day of , 19 , before me personally came [president, vice-president, secretary or assistant secretary, as the case may be], with whom I am personally acquainted, who, being by me duly sworn, says that is the president [or, vice-president], and is the secretary [or, assistant secretary] of the , the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president [or, vice-president], and that said president [or, vice-president] and secretary [or, assistant secretary] subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and [when the official seal is required by law] official seal, this the day of [year].

[OFFICIAL SEAL.]

[Signature of officer.]

137. Corporate Acknowledgment by President, Presiding Member or Trustee of Corporation, with Seal Attested by Secretary.

North Carolina, County.

This day of , A. D. , personally came before me [here give name and official title of the officer who signs the certificate] A. B., who, being by me duly sworn, says that he is president [or, presiding member, or, trustee] of the Company, and that the seal affixed to the foregoing [or, annexed] instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said A. B. acknowledged the said writing to be the act and deed of said corporation.

[Signature of officer.]

NORTH DAKOTA.

1. *Seal*.—All distinctions between sealed and unsealed instruments abolished. Revised Codes, 1905, §§ 4973, 5338.

2. *Witnesses*.—Not necessary if there be acknowledgment. *Ibid.*, § 4973.

3. *Husband and wife*.—Conveyance or instrument executed by married woman has same effect as if she was unmarried, and may be acknowledged in the same manner. *Ibid.*, § 5016. But conveyance or incumbrance of home-

stead of married person must be executed and acknowledged by both husband and wife. *Ibid.*, § 5052. Dower and curtesy abolished. *Ibid.*, §§ 4082, 5188.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: At any place within the state before a justice or clerk of the supreme court or a notary public; within the judicial district, county, subdivision or city for which the officer was elected or appointed, before judges or clerks of courts of record, mayors of cities, registers of deeds, justices of the peace, United States circuit or district court commissioners, county auditors. *Ibid.*, §§ 5011, 5012.

(b) Without state and within United States: Justices, judges or clerks of any court of record of the United States, or of any state or territory, notary public, any officials, where acknowledgment is made, authorized by law to take proof or acknowledgments, commissioners appointed by the governor of this state. *Ibid.*, § 5013.

(c) Without the United States: United States ministers, commissioners or charge d'affaires resident and accredited in the country where proof or acknowledgment is taken, United States secretaries of legation, consuls, vice-consuls or consular agents resident in country; judges, clerks, registers or commissioners of courts of record of the country; notaries public, officers authorized by laws of country to take proof or acknowledgment.

When any of the officers mentioned above are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal as deputy, or by such deputy as deputy. *Ibid.*, § 5014.

5. *Forms.*—Prescribed by statute; form is to be substantially followed.

138. Acknowledgment.

(*Ibid.*, § 5022.)

STATE OF _____, }
County of _____, } ss.

On this _____ day of _____, in the year _____, before me personally appeared _____, known to me [*or*, proved to me on the oath of _____], to be the person who is described in, and who executed the within instrument, and acknowledged to me that he [*or*, they] executed the same.

139. Acknowledgment by Corporation.

(*Ibid.*)

STATE OF _____, }
County of _____, } ss.

On this _____ day of _____, in the year _____, before me [*here insert the name and quality of the officer*], personally appeared _____, known to me [*or*, proved to me on the oath of _____ [to be the president [*or*, the secretary]] of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

The signature of a corporation to conveyances, transfers and other instruments affecting real estate shall be as follows:

[*full name of corporation*].

By _____ [*some officer authorized by resolution or the by-laws of the corporation to execute and acknowledge such instrument*].

[*Official designation of person signing*].

Attest:

[SEAL.]

Secretary.

140. Acknowledgment by Attorney in Fact.

(Ibid.)

STATE OF _____,
 County of _____, } ss.

On this _____ day of _____, in the year _____, before me [*here insert the name and quality of the officer*], personally appeared _____, known to me [or, proved to me on the oath of _____] to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of _____, and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact.

141. Acknowledgment by Deputy Sheriff.

(Ibid.)

STATE OF _____,
 County of _____, } ss.

On this _____ day of _____, in the year _____, before me, a _____ in and for said county, personally appeared _____, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that he subscribed the name of _____ thereto, as sheriff of said county and his own name as deputy sheriff.

OHIO.

1. *Seal.*— Not necessary except for corporations. Bates' Annotated Statutes, 1908, § 4.

2. *Witnesses.*— Two required in addition to acknowledgment. Ibid., § 4106.

3. *Husband and wife.*— Wife must join in deed of husband. No separate examination. Ibid., §§ 4106, 4107.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Judges of courts of record or clerks thereof, county auditors, county surveyors, notaries public, mayors or justices of the peace.

(b) Without the state and within the United States: Commissioners appointed by the governor, and also in conformity with the laws of any state, territory or country, where instrument is executed and acknowledged or proved.

(c) Without the United States: Before a commissioner appointed by the governor, or consuls-general, vice-consuls-general, deputy consuls-general, consuls, vice-consuls, deputy consuls, commercial agent or consular agent of United States, resident in any foreign state, or in conformity with the laws of such country. Ibid., §§ 4106, 4111.

5. *Forms.*— Not expressly prescribed by statute.

142. Acknowledgment.

THE STATE OF _____, County of _____, ss.

BE IT REMEMBERED, That on the _____ day of _____, in the year of our Lord, one thousand nine hundred and _____, before me, the subscriber, a _____ in and for said county, personally came _____, the grantor in the foregoing deed, and acknowledged the signing thereof to be _____ voluntary act, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my _____ seal, on the _____ day and year last aforesaid.

OKLAHOMA.

1. *Seal*.— Seal not necessary except for corporation. Compiled Laws, 1909, §§ 1093, 1094.

2. *Witnesses*.— No subscribing witness necessary. *Ibid.*, §§ 1185, 1209. All male persons of 21 years or females of 18 years and all persons who have been legally married at whatever age, may hold, mortgage or convey or make any contract relating to real estate or any interest therein. *Ibid.*, § 1184.

3. *Husband and wife*.— Either may convey, mortgage or make any contract relating to any real estate other than the homestead belonging to him or her, without the other joining. *Ibid.*, § 1193.

Deeds, mortgages or contracts relating to the homestead exempt by law, except a lease for a period not exceeding one year, must be signed by both husband and wife, if living, and not divorced. But if title to the homestead is in husband and the wife voluntarily abandons him for one year or takes up her residence out of the state he may convey, mortgage or make any contract relating thereto without being joined by wife, and where title to homestead is in the wife, under like conditions of abandonment of husband or his taking up residence outside of the state for a period of one year, she may alone convey, mortgage or make any contract. *Ibid.*, §§ 1187, 1189.

If husband shall make any deed, mortgage or contract relating to homestead without being joined by his wife, he shall be concluded thereby and the same can only be avoided by the wife. Same rule applies to a conveyance by the wife and can be avoided only by the husband. In either case the husband or wife entitled to avoid such deed, mortgage or contract shall be concluded by failure after due notice of any suit in a court of competent jurisdiction to set forth his or her right, title or interest therein. *Ibid.*, § 1190.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Every acknowledgment, except when taken by a justice of the peace, must be under the seal of the officer taking the same, and may be taken in the county where the land is situated before any justice of the peace, notary public, county clerk, clerk of the district court or county judge. *Ibid.*, § 1222.

(b) Without the state and within the United States: Before any notary public, clerk of a court of record, commissioner of deeds appointed by the governor.

(c) Without the United States: Before any court of record or clerk of such court, or before any consul of the United States. *Ibid.*, § 1222.

5. *Forms*.— Prescribed by statute.

. 143. Acknowledgment by Individual.

(*Ibid.*, § 1221.)

STATE OF OKLAHOMA, }
County, } ss.

Before me, a _____ in and for said county and state, on the _____ day of _____, 19____, personally appeared _____ and _____, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

Every deed, or other instrument affecting real estate, made by a corporation must have the name of such corporation subscribed thereto either by an attorney in fact or by the president or a vice-president of such corporation, and when made by a public corporation the name of such corporation must be subscribed by the chief officer thereof, and, except when executed by an attorney in fact, must be attested by the secretary or clerk of such corporation, with the corporate seal attached. It must be acknowledged by the officer or person subscribing the name of the corporation thereto in substantially the following form:

144. Acknowledgment by Corporation.

(Ibid., §§ 1228-1230.)

STATE OF OKLAHOMA, }
County, } ss.

Before me, a _____ in and for said county and state, on this _____ day of _____, 19____, personally appeared _____, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its [attorney in fact, president, vice-president, or, mayor, as the case may be] and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

OREGON.

1. *Seal*.—Seal or scroll necessary as primary evidence of consideration; otherwise an instrument may be executed without one. No difference between sealed and unsealed writings except as to time of commencing actions or suits thereon. Writing under seal may be modified or discharged by writing not under seal, or by oral agreement otherwise valid. Annotated Codes and Statutes of 1901, §§ 765, 766. Private seal may be by stamp or impression upon wax, wafer, paper or any other like substance, upon which a visible and permanent impression can be made, or if made without an impression, by a wafer or wax attached to it, or by a scroll or other sign made with a pen or printed upon the paper. And any printed seal or scroll on the instrument at time of signing will be presumed to have been adopted by the person signing his name before it. A scroll or other sign made in a sister state or territory or District of Columbia or foreign country and there recognized as a seal, shall be so regarded in Oregon, and any instrument valid in the state where executed without a seal shall be valid in like manner in Oregon. Ibid., § 764, as amended by L. 1907, ch. 173.

2. *Witnesses*.—Two subscribing witnesses necessary. Ibid., § 5342.

3. *Husband and wife*.—Husband and wife by joint deed may convey real estate of wife, but she is not bound by any covenant contained in such deed. Ibid., § 5334. No separate acknowledgment required. Ibid., § 5346. If wife who does not reside within state, shall join with her husband in a deed, her conveyance shall have the same effect as if she was sole. Ibid., 5348. Husband or wife may constitute the other his or her attorney in fact to control, sell, and convey, mortgage or bar dower or curtesy in his or her property for their mutual benefit and may revoke the same to the same extent and manner as other persons. Ibid., § 5237, as amended by L. 1907, ch. 170. Wife may bar her dower by joining in deed of her husband or of his guardian if he is a minor or by separate deed with or without mentioning the barring of dower therein. Separate deed releasing inchoate right of dower shall not be executed to a stranger to the title. Ibid., § 5527, as amended by L. 1907, ch. 170. Dower and curtesy exist.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Judges of the supreme court, county judges, justices of the peace, notaries public. Annotated Codes and Statutes 191, § 5342.

(b) Without the state and within the United States: May be executed according to the laws of any state, territory or district before any judge of a court of record, justice of the peace, notary public or other officer authorized by such local laws to take the acknowledgments of deeds therein or before any commissioner appointed by the governor. Unless acknowledgment taken before a commissioner, or notary under his seal, or the clerk of a court of record certified under the seal of the court, there must be a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his

office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district. Ibid., §§ 5343, 5344.

(c) Without the United States: It may be executed according to the laws of such country before notaries public or any United States minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul appointed to reside therein, certified under the officer's seal, or before a notary under his seal. Ibid., § 5345.

5. *Forms.*

145. Acknowledgment.

STATE OF OREGON, }
County of , } ss.

I hereby certify that on this day of , A. D. 19 , before me, the undersigned [*here insert name and official title*] in and for said county, personally appeared the above-named and , his wife, to me personally known to be [or, satisfactorily proved to me upon the oath of to be] the identical persons described in and who executed the foregoing instrument, and duly acknowledged to me that he [or, they] executed the same freely and voluntarily for the purposes and uses therein made.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

146. Acknowledgment by Attorney in Fact.

STATE OF OREGON, }
County of , } ss.

I hereby certify that on this day of , A. D. 19 , before me, the undersigned [*here insert name and official title*] in and for said county, personally appeared the above-named , by , his attorney in fact, to me personally known and known to me to be the individual described in and who executed the foregoing instrument for and on behalf of the said and duly acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

PENNSYLVANIA.

1. *Seal.*—Seal or scroll required.

2. *Witnesses.*—Two necessary unless deed is acknowledged.

3. *Husband and wife.*—Wife should join in her husband's conveyance, but separate acknowledgment no longer required. Purdon's Digest 1905, p. 1153.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Judges of the supreme court, justices of courts of common pleas of the county, mayors and aldermen of Philadelphia, recorders of deeds and notaries public, justices of the peace, commissioners appointed by courts in cities of first class. Ibid., pp. 1156, 1157, 1158.

(b) Without state and within United States: Judges of United States supreme or district courts, judges or justices of the supreme or superior courts or courts of common pleas of any state or territory certified under the hand of said judge and seal of the court. Ibid., p. 1153. Commissioners appointed by the governor. Ibid., p. 1160.

(c) Without the United States: United States ambassadors, ministers plenipotentiary, charge d'affaires or other officers exercising public ministerial functions, notary public under seal. *Ibid.*, p. 1158. Any person holding the rank of major or higher rank in United States Army, under commission from the governor of the state. *Ibid.*, p. 1158.

5. *Forms.*—Prescribed by statute. Laws 1909, ch. 53.

147. Acknowledgment.

STATE OF PENNSYLVANIA, }
 County of , } ss.

On this day of , A. D. , before me, , came the above named , and acknowledged the foregoing deed to be act and deed, and desired the same to be recorded as such.

WITNESS my hand and seal, the day and year aforesaid.

[SEAL.]

.....

 [Official character.]

My commission expires

148. Acknowledgment by Corporation.

A corporation may acknowledge any deed, conveyance, mortgage or other instrument of writing by an attorney appointed by such corporation, and such appointment may be embodied in said deed, conveyance, mortgage or other instrument of writing in substantially the following form:

STATE OF , }
 County of , } ss.

I hereby certify that on this day of , in the year of our Lord , before me, the subscribed [*title of officer taking acknowledgment*] personally appeared [*name of attorney*], the attorney named in the foregoing [*name of instrument*], and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said [*name of instrument*] to be the act of the said [*corporation's name*].

WITNESS my hand and seal, the day and year aforesaid.

RHODE ISLAND.

1. *Seal.*—Not required. General Laws 1909, p. 875.

2. *Witnesses.*—Not required.

3. *Husband and wife.*—Separate examination not required. *Ibid.*, pp. 875, 855. Curtesy and dower exist. *Ibid.*, p. 855. Wife may make any contract whatsoever as if she were single and unmarried, with the same rights and liabilities, and may sell and convey directly to or may take directly from her husband or any other person. *Ibid.*, p. 855. Wife may bar her dower by joining husband in deed or by separate release.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: State senators, judges, justices of the peace, mayors, notaries public, town clerks, or recorders of deeds.

(b) Without the state and within the United States: Judges or justices of courts of record or other court, justices of the peace, mayors, notaries public, commissioners appointed by governor. If instrument is acknowledged or proof as prescribed by law of the state, territory or District of Columbia, where executed, it shall be sufficient in Rhode Island.

(c) Without the United States: United States ambassadors, ministers, charge d'affaires, consuls-general, vice-consuls-general, consuls, vice-consuls, consular agents, commercial agents or commissioners appointed by the governor. If instrument requiring acknowledgment is executed without the limits of the United States by any ambassador, minister, charge d'affaires, consuls-general, vice-consuls-general, consul, vice-consul, consular agent, commercial agent of United States or commissioner appointed by governor of state as grantor, it may be executed in the presence of two witnesses, and when so executed an official certificate under the hand and official seal of the grantor that such instrument is his act and deed shall be equivalent to an acknowledgment of such instrument in the manner required by law. Acknowledgment may also be made within or without the limits of the state by any person actually engaged in the military or naval service of United States, before any colonel, lieutenant-colonel or major in the army or before any officer in the navy not below the grade and rank of lieutenant-commander. Any acknowledgment made in good faith before a person claiming to be one of the officers authorized to take acknowledgments within the respective jurisdictions as above, shall be valid, although the official before whom the same is made was not duly qualified in such office. *Ibid.*, pp. 876, 877.

5. *Forms.*— Acknowledgment need not be in any set form, but shall be made by all the party grantors, including married women, even though releasing dower only, and the certificate thereof shall express the ideas that the grantors respectively making the acknowledgment were each and all known to the magistrate taking the acknowledgment and known by the magistrate to be the parties executing the instrument, and that they acknowledged said instrument to be their free act and deed. No other acknowledgment shall be required of married women. *Ibid.*, p. 875.

149. Acknowledgment by Husband and Wife.

STATE OF RHODE ISLAND, }
County of , } ss.

In , on this day of , 19 , before me [*name and official title*] personally appeared and , his wife, each known to me and known by me to be the parties executing the foregoing instrument, and they thereupon acknowledged said instrument by them executed to be their true act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

SOUTH CAROLINA.

1. *Seal.*— Required, but where it shall appear in the attestation clause or from the other parts of any instrument in writing, that it was the intention of the party or parties thereto that said instrument should be a sealed instrument, then said instrument shall be construed to be and shall have the effect of a sealed instrument, although no seal be actually attached thereto. Code of Laws 1902, § 2367.

2. *Witnesses.*— Deed must be executed in the presence of two or more credible subscribing witnesses. *Ibid.*

3. *Husband and wife.*— Wife may relinquish her right of dower in any real estate and acknowledge the same within the state in open court or before any judge of the court of common pleas, justice of the supreme court, judge of probate, clerk of the court of common pleas, magistrate or notary public; or if she be without this state, before a commissioner of deeds of this state, or before a commissioner appointed by *dedimus*, or before any consul, vice-consul, deputy consul, consular agent, commercial agent of the United States, or any other officer appointed by the United States in foreign countries with the power to administer oaths and having an official seal, or a clerk of court of

record, or before a notary public, who must each append to the certificate the official seal used by him, and in the case of the certificate of a notary public his official character must be attested by a clerk of the court of record of the county in which he may reside. *Ibid.*, § 2383. Separate acknowledgment necessary, but renunciation of dower must be recorded within forty days. *Ibid.*, § 2384. After a homestead has been set off and recorded it cannot be conveyed or mortgaged except by joint deed if both husband and wife be living. *Ibid.*, § 2630.

4. *Officers before whom acknowledgments may be taken:*

Before any deed or other instrument in writing can be recorded in this state, the execution thereof shall be first proved by the affidavit of a subscribing witness to said instrument, taken before some officer within this state competent to administer an oath. If the affidavit be taken without the state, it may be before a commissioner or commissioners appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded; or before a commissioner of deeds of this state; or before a clerk of a court of record, who shall make certificate thereof under his official seal; or before a notary public, who shall affix thereto his official seal and shall accompany the same with a certificate as to his official character by a clerk of a court of record of the county in which the affidavit is taken; or before a consul, or a vice-consul, or consular agent of the United States. Where the affidavit of a subscribing witness cannot be had by reason of the death, insanity or absence from the state of such witness, then the instrument may be recorded upon proof of such fact, and of the handwriting of the parties who signed the instrument, and of the subscribing witnesses by proper affidavit — the proof in every case to be recorded with the instrument. *Ibid.*, § 948.

5. *Forms.*— Not prescribed by statute, but the following complies with *Ibid.*, § 2384, to be recorded within forty days.

150. Acknowledgment by Married Woman.

STATE OF SOUTH CAROLINA, }
County of , } ss.

I, F. G. [judge, trial justice or other office, as the case may be], do hereby certify unto all whom it may concern, that E. B., the wife of the within-named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named C. D., his heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in or to, all and singular, the premises within-mentioned and released.

GIVEN under my hand and seal, this day of , Anno Domini,

[SEAL.] "F. G."

E. B.

151. Acknowledgment.

THE STATE OF SOUTH CAROLINA, }
County. }

Personally appeared before me, and made oath that saw the within-named sign, seal, and as act and deed, deliver the within-written deed; and that with witnessed the execution thereof.

Sworn to before me, this

day of , A. D., 19 .

[SEAL.]

152. Renunciation of Dower.

THE STATE OF SOUTH CAROLINA, }
 County. }

I, _____, do hereby certify unto all whom it may concern that Mrs. _____, the wife of the within-named _____, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named _____, heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within-mentioned and released.

GIVEN under my hand and seal, this _____ day of _____, Anno Domini, 19 ____ .
 [SEAL.]

SOUTH DAKOTA.

1. *Seal*.—Not necessary. Civ. Code 1908, § 1243.
 2. *Witnesses*.—Not necessary if acknowledged. Ibid., §§ 962, 976-979.
 3. *Husband and wife*.—Neither has any interest in the property of the other, and married woman may convey title to any other person. Ibid., §§ 97, 975.
 4. *Officers before whom acknowledgments may be taken*:
 - (a) Within state: In any part of the state before a justice or clerk of the supreme court or notary public. Within the judicial circuit, county, subdivision or city of the state for which the officer was elected or appointed, before the judges or clerks of courts of record, mayors of cities, registers of deeds, justices of the peace, United States circuit or district court commissioners, county auditors.
 - (b) Without the state and within United States: Within their several jurisdictions before justices, judges or clerks of any courts of record of the United States or of any state or territory, notaries public, any other officer of the state or territory where the acknowledgment is made authorized by its laws to take such proofs or acknowledgments, commissioners appointed by the governor.
 - (c) Without United States: Ambassadors, ministers, commissioners or charge d'affaires of United States resident and credited in the country where the proof or acknowledgment is taken, United States consuls, vice-consuls, consular agents resident in country where proof or acknowledgment is made, clerks, judges, registers or commissioners of courts of record of the country where proof or acknowledgment is made, notaries public, officers authorized by the law of the country to take proof of acknowledgments. Also, by any duly authorized deputies of the officers mentioned in these subdivisions. Ibid., §§ 970-973.
- Officer must know or have satisfactory evidence on the oath or affirmation of a credible witness that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation. Ibid., § 974.
- Officers of corporations authorized by charter, by-laws, consent of stockholders or directors, may execute instruments and acknowledge same, Corporate seal attached to instrument so acknowledged is *prima facie* evidence that such officer was duly authorized to execute such instrument. Laws 1907, chapter 2. Revisal 1908, § 974.

Seals of officers taking acknowledgments must be attached if laws of the state, territory or county* where acknowledgment is taken requires them to have official seals. Judges and clerks of courts of record must authenticate their certificates by the seal of their court, and mayors of cities by the seal of the city. Acknowledgments before a justice of the peace when used in any county where he does not reside must have certificate under hand and seal of the clerk of the circuit court or other county court of record of the county where justice resides, setting forth that such justice at the time of taking such proof or acknowledgment was authorized to take the same, and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

5. *Forms.*—Prescribed by statute.

153. Acknowledgment.

(Ibid., § 981.)

STATE OF SOUTH DAKOTA, }
County of , } ss.

On this day of in the year , before me [*name and description of officer*] personally appeared well known to me [or, proved to me on the oath of] to be the person who is described in, and who executed the within instrument, and duly acknowledged to me that he [or, they] executed the same.

154. Acknowledgment by Corporation.

(Ibid., § 981.)

STATE OF SOUTH DAKOTA, }
County of , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared known to me [or, proved to me on the oath of] to be the president [or, the secretary] of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

155. Acknowledgment by Attorney in Fact.

(Ibid., § 981.)

STATE OF SOUTH DAKOTA, }
County , } ss.

On this day of , in the year , before me [*here insert the name and quality of the officer*], personally appeared , known to me [or, proved to me on the oath of] to be the person who is described in, and whose name is subscribed to the within instrument as the attorney in fact of , and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact.

* So in original.

156. Acknowledgment by Deputy Sheriff.

(Ibid., § 981.)

STATE OF SOUTH DAKOTA, }
 County , } ss.

On this day of in the year , before me a [here insert name and quality of officer], personally appeared , known to me [or, proved to me on the oath of], to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that he subscribed the name of thereto as sheriff of said county and his own name as deputy sheriff.

TENNESSEE.

1. *Seal*.—Private seals except for corporations abolished. Code of 1896, § 3213.

2. *Witnesses*.—Not required if acknowledged; otherwise two or more are necessary. Ibid., §§ 3671, 3712.

3. *Husband and wife*.—Wife must be privately examined in accordance with statute, and must join in conveyance by husband. Ibid., §§ 3753–3755. The officer or court before whom the execution is acknowledged or proved must examine the wife privily and apart from her husband, touching her voluntary execution of the instrument and her knowledge of its contents and effect, and she must acknowledge or state that she executed the same freely and voluntarily and without any compulsion on the part of her husband, and the clerk or other officer must be satisfied that she fully understands the same. Ibid., § 3753. Homestead may be sold by joint deed of husband and wife. Ibid., § 3798.

4. *Officers before whom acknowledgments may be taken*:

(a) Within state: Clerks of county courts and their deputies, notaries public under seal.

(b) Without state and within United States: Commissioners appointed by governor, notaries public under their seals, courts of record and their clerks.

(c) Without United States: Commissioners of this state, notaries public, consuls, ministers or ambassadors of the United States. Ibid., § 3718.

If made before a judge he shall make the certificate under his hand, and thereupon the clerk of his court shall certify under his seal of office, if there be a seal, or under his private seal if there be none, as to the official character of the judge, or the official character of the judge may be certified by the governor of the state or territory under the great seal of the state or territory. If acknowledgment made before a court of record a copy of the entry of the acknowledgment on the record shall be certified by the clerk under his seal of office if there be one, or if there be none, under his private seal, and the judge, chief justice or presiding magistrate of the court shall certify as to the official character of the clerk. If the acknowledgment be before a clerk of some court of record of another state of the Union, and certified by him under his seal of office, the judge, chief justice or presiding magistrate of the court shall certify to the official character of the clerk. Ibid., §§ 3713–3721.

5. *Forms*.—Prescribed by Ibid., §§ 3717, 3735, 3753, 3755, and Supplement of 1903, § 3747.

157. Acknowledgment before Clerk.

(Ibid., § 3717.)

STATE OF TENNESSEE, }
 County of , } ss.

Personally appeared before me, , clerk [or, deputy clerk] of the county court of said county, the within-named , the bargainer, with whom I am

personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this day of .
[SEAL, when required.]

[*Signature and title.*]

158. Acknowledgment by Husband and Wife.

(Ibid., § 3735.)

STATE OF TENNESSEE, }
County of , } ss.

Personally appeared before me, , clerk [*or, deputy clerk*] of the county court of said county, the within-named , the bargainer, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained. And D. E., wife of the said C. E., having appeared before me, privately and apart from her husband, the said C. E., acknowledged the execution of the said deed to have been done by her freely, voluntarily and understandingly, without compulsion or constraint from her said husband, and for the purposes therein expressed.

WITNESS my hand at office, this day of , 18 .
[SEAL.]

[*Signature and title.*]

159. Proof by Subscribing Witness.

(Ibid., § 3753.)

STATE OF TENNESSEE, }
County of , } ss.

Personally appeared before me, , clerk [*or, deputy clerk*] of the county court of county aforesaid, and , subscribing witnesses to the within deed, who, being first sworn, deposed and said, that they are acquainted with , the bargainer [*or, as the case may be*], and that he acknowledged the same, in their presence, to be his act and deed, upon the day it bears date [*or, stating the time, as proved by the witnesses.*]

WITNESS my hand, at office, this day of , 18 .
[OFFICIAL SEAL, when required.]

[*Signature and title.*]

160. Commission to Take Examination of Wife, Etc., in Case of Disability, Etc.

(Ibid., § 3754.)

STATE OF TENNESSEE, }
County of , } ss.

To , Esq.:

You are hereby authorized and empowered to take the examination of , privately and apart from her husband, relative to the free execution of the

within [or, annexed] deed, and the same so taken, to certify under your hand and seal.

WITNESS, _____, clerk of the court of _____, at _____ office, the _____ day of _____, one thousand nine hundred and _____.

The commissioner shall indorse upon or attach to the deed the following certificate.

161. Certificate of Acknowledgment of Wife so Examined.

(Ibid., § 3755.)

STATE OF TENNESSEE, }
County of _____, } ss.

_____, wife of _____, having personally appeared before me, and having, by virtue of the authority in me vested, been examined privately and apart from her said husband, and she having acknowledged the due execution of the within [or, annexed] deed, by her freely, voluntarily and understandingly, without compulsion or constraint by her said husband, and for the purposes therein expressed, the same is therefore certified.

WITNESS my hand and seal, this _____ day of _____, nineteen hundred and _____.

162. Acknowledgment by Corporation.

(Supplement of 1903, § 3747.)

STATE OF TENNESSEE, }
County of _____, } ss.

Before me [*here state name and title of office*], personally appeared _____, with whom I am personally acquainted and who, upon oath, acknowledged himself to be president [*or other officer authorized to execute the instrument*] of the _____ company, the within-named bargainor, a corporation, and that he, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as _____.

WITNESS my hand and seal, at office in _____, this _____ day of _____.

TEXAS.

1. *Seal*.—Not required except for corporation. Revised Statutes 1895, §§ 4862, 4863.

2. *Witnesses*.—Unless duly acknowledged, every deed must be signed or acknowledged in presence of at least two credible subscribing witnesses thereto, who must be known to the officer or proved to be such by the oath of a credible witness. Ibid., § 630.

3. *Husband and wife*.—Must join in conveyance of separate property of the wife and she must acknowledge privily and apart from her husband. Ibid., § 635. Homestead shall not be sold by husband without consent of wife, duly acknowledged. Ibid., § 636.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: Clerks of district courts, judges or clerks of county courts, and notaries public.

(b) Without state and within United States: Clerks of courts of record having a seal, commissioners of deeds of this state and notaries public.

(c) Without United States: Ministers, commissioners, charge d'affaires, resident and accredited in the country where proof or acknowledgment is made, consuls-general, consuls, vice-consuls, commercial agents, vice-commercial agents, deputy consuls and consular agents of the United States, resident in country, and notaries public. *Ibid.*, §§ 4613-4615.

5. *Forms.*—Prescribed by *ibid.*, §§ 4620, 4621, 4624.

163. Acknowledgment.

(*Ibid.*, § 4620.)

THE STATE OF . }
County of . }

Before me [here insert the name and character of the officer], on this day, personally appeared , known to me [or, proved to me on the oath of] to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this day of , A. D.

[SEAL.] [Signature and official title.]

164. Acknowledgment by Married Woman.

(*Ibid.*, § 4621.)

THE STATE OF . }
County of . }

Before me [here insert the name and character of the officer], on this day personally appeared , wife of , known to me [or, proved to me on the oath of] to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said , acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN under my hand and seal of office, this day of , A. D.

[SEAL.] [Signature and official title.]

165. Proof by Subscribing Witness.

(*Ibid.*, § 4624.)

THE STATE OF . }
County of . }

Before me [here insert the name and character of the officer], on this day personally appeared , known to me [or, proved to me on the

oath of _____], to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me, stated on oath that he saw _____, the grantor, or person who executed the foregoing instrument, subscribe the same [or, that the grantor or person who executed such instrument of writing, acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed], and that he had signed the same as a witness at the request of the grantor [or, person who executed the same].

Given under my hand and seal of office, this _____ day of _____, A. D. _____.
 [SEAL.] [Signature and official title.]

UTAH.

1. *Seal*.—Private seal not required. Compiled Laws 1907, §§ 1976, 3399.

2. *Witnesses*.—None required if deed acknowledged; otherwise proof by one subscribing witness, or where all the subscribing witnesses are dead or cannot be had, by evidence of the handwriting of the party and of a subscribing witness if there is one, given by a credible witness to each signature. Witness must be personally known to officer or proved to be such by the oath or affirmation of a credible witness personally known to such officer. *Ibid.*, §§ 1984, 1991, 1992.

3. *Husband and wife*.—Real and personal estate of every female acquired before marriage and all property to which she may afterward become entitled by purchase, gift, grant, inheritance or devise shall be and remain such property of such female, and shall not be liable for the debts, obligations and engagements of her husband, and may be conveyed, devised or bequeathed by her as if she were unmarried. Constitution, art. XXII, § 2. Wife takes one-third in value of all the legal or equitable estate in real property possessed by the husband at any time during the marriage, unless she has relinquished her rights. But wife not entitled to any interest if husband has conveyed property when the wife at the time of the conveyance was not and never had been a resident of the territory or state of Utah. Compiled Laws of 1907, § 2826. Husband and wife must join in conveyance of recorded homestead. *Ibid.*, § 1155.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Judges or clerks of courts having a seal, notaries public, county recorders and county clerks. *Ibid.*, § 1985. But a notary public in this state shall certify under seal and affix to all acknowledgments, oaths, affirmations and instruments the date on which his commission expires. *Ibid.*, § 1672.

(b) Without state and within United States: Judges or clerks of United States, state or territorial courts having a seal, notaries public, commissioners appointed by governor. *Ibid.*, § 1985.

(c) Without the United States: Judges or clerks of any court of any state, kingdom or empire having a seal, or notaries public, or United States ambassadors, ministers, commissioners or consuls appointed to reside therein. *Ibid.*, § 1985.

When any of the officers above mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal. Acknowledgments before judges or clerks must be under their hands and the seal of their court, and by all other officers under his hand and official seal. *Ibid.*, §§ 1985-1987.

5. *Forms*.—Prescribed by Compiled Laws, 1907, §§ 1989, 1990, 1994.

166. Acknowledgment.

(Ibid., § 1989.)

STATE OF UTAH, }
 County of , }

On the day of , A. D. 19 , personally appeared before me, A. B., the signer of the above instrument, who duly acknowledged to me that he executed the same.

[Signature and official title.]

167. Acknowledgment by Corporation.

(Ibid.)

STATE OF UTAH,
 County of ,

On the day of , A. D. 19 , personally appeared before me, A. B., who, being by me duly sworn [or, affirmed], did say that he is the president [or other officer or agent, as the case may be] of [naming the corporation], and that said instrument was signed in behalf of said corporation by authority of its by-laws [or, by resolution of its board of directors, as the case may be], and said A. B. acknowledged to me that said corporation executed the same.

[SEAL.]

[Signature and official title.]

168. Acknowledgment by Grantor Unknown to Officer.

(Ibid., § 1990.)

STATE OF UTAH, }
 County of , }

On this day of , A. D., 19 , personally appeared before me, A. B., satisfactorily proved to me to be the signer of the above instrument by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same.

[SEAL.]

[Signature and official title.]

169. Proof by Subscribing Witness.

(Ibid., § 1994.)

STATE OF UTAH, }
 County of , }

On this day of , A. D., 19 , before me personally appeared A. B., personally known to me [or, satisfactorily proved to me by the oath of C. D., a competent, and credible witness for that purpose, by me duly sworn], to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposes and says, that he resides in , county of , and state of Utah; that he was present and saw

E. F., personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same, and heard him acknowledge that he executed the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said E. F.

[SEAL.]

[Signature and official title.]

VERMONT.

1. *Seal*.—Seal is required. Public Statutes 1906, § 2577.

2. *Witnesses*.—Two or more required. *Ibid.*, §§ 2577, 2597. Corporation authorized to hold real estate may convey same by agent appointed by vote for that purpose. *Ibid.*, § 2576.

3. *Husband and wife*.—Wife's property may be conveyed by joint deed. *Ibid.*, § 2573. Where husband is under guardianship, wife may join with guardian in conveyance, except as to homestead. *Ibid.*, §§ 2574, 2575. Except by way of mortgage for purchase money thereof given at time of purchase, wife must join in conveyance of homestead, but joining of wife in such conveyance shall have no effect upon her right to one-third in value of her husband's real estate. *Ibid.*, §§ 2553, 2554. Wife's joining in mortgage on homestead has no other effect than to bar her claim as against such mortgage, and if mortgage include other lands these must be sold first and applied on the mortgage, or if sold as a whole, the probate court must set aside balance of proceeds not exceeding \$500, for homestead. *Ibid.*, § 2555. No separate acknowledgment. Instead of dower, widow is entitled to one-third in value of real estate of which her husband died seized in his own right, unless previously released, but where a right of homestead also exists such one-third should be diminished by amount of such homestead. *Ibid.*, § 2921. Husband is entitled to one-third in value of wife's real estate in fee. *Ibid.*, § 2934. If wife dies leaving no issue but a will, husband may waive its provisions as widow may waive the provisions of her husband's will. *Ibid.*, § 2935.

4. *Officers before whom acknowledgments may be taken*:

(a) Within the state: Justices, town clerks, notaries public, masters in chancery, county clerks, judges or registers of probate. Notary need not use seal. *Ibid.*, § 2577.

(b) Without state and within United States: If taken outside of state it may be certified agreeable to the laws of the state, province or kingdom in which such acknowledgment or proof is taken, and may be taken before a justice, magistrate or notary public.

(c) Without the United States: Commissioner appointed by the governor, minister, charge d'affaires, consul or vice-consul of United States in a foreign country. *Ibid.*, § 2598.

5. *Forms*.—Not prescribed. *Ibid.*, § 2577.

170. Acknowledgment.

STATE OF VERMONT, }
County of , } ss.

Be it remembered that at , in said county, on this day of , 19 , personally appeared and acknowledged the foregoing instrument by him sealed and subscribed, to be his free act and deed.

Before me, A. B.

[Official title.]

VIRGINIA.

1. *Seal or scroll*.—Sufficient. Va. Code 1904, § 2841.

2. *Witnesses*.—Two necessary unless acknowledged. *Ibid.*, § 2500.

3. *Husband and wife*.—Must join in each other's conveyances. No separate acknowledgment since May 1, 1888. *Ibid.*, §§ 2501, 2502.

4. *Officers before whom acknowledgments may be taken:*

(a) Within state: Before circuit court of any county or corporation court of any city, except Richmond, and the chancery court of Richmond, when writing is to be or may be recorded in said city, or the clerk of any such court or the deputy of such clerk, or clerk of any court of record, or notaries public.

(b) Without state and within United States, or in the Philippines, Porto Rico or any other territory, possession or dependency of United States: Clerks of any court, justices, commissioners in chancery of a court of record or notaries public.

(c) Without United States: Under official seal of any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by United States to any foreign country, or of the proper officer of any court of such country or of the mayor or other chief magistrate of any city, town or corporation therein that the said writing was acknowledged by maker or proved as to him by two witnesses, and where writing purports to have been signed in behalf or by authority of any person or corporation, or in any representative capacity whatsoever, the certificate of acknowledgment by the person so signing the said writing shall be sufficient without expressing that such acknowledgment was in behalf or by authority of such person or corporation, or was in a representative capacity. *Ibid.*, §§ 2500, 2501.

Except where it is otherwise provided, the circuit court of any county, or the corporation court of any city, other than the city of Richmond, in which any writing is to be or may be recorded, and the chancery court of the city of Richmond, when any such writing is to be or may be recorded in said city, or the clerk of any such court, or his duly qualified deputy, in his office, shall admit to record any such writing as to any person whose name is signed thereto, when it shall have been acknowledged by him, or proved by two witnesses as to him in such court, or before such clerk, or his duly qualified deputy, in his office, or in the manner prescribed in section 2501, and when such writing is signed by a person acting on behalf of another, or in any representative capacity, such acknowledgment before such court or clerk, or his deputy, may be in accordance with the provisions of section 2501.

Any writing which, since the 31st day of January, 1904, has been admitted to record in the circuit court of any county or by the clerk of any such court, or by any county clerk, or the deputy of any such clerk, after having been acknowledged or proved before such county clerk, or his deputy, or in the manner required by this act and the following section of the Code, shall be regarded as having been as fully and properly admitted to record as if such acknowledgment or proof and admission to record had taken place in the manner herein prescribed and after the passage of this act. *Ibid.*, § 2500.

5. *Forms.*—Prescribed by statute.

171. Acknowledgment.

(*Ibid.*, § 2500.)

172. Acknowledgment.

(*Ibid.*, § 2501.)

County [or, corporation] of _____, to-wit: I, _____, clerk [or, deputy clerk of _____ court [or, a justice of the peace, or, commissioner in chancery of the _____ court, or, notary public], for the county [or, corporation] aforesaid, in the state [or, territory or, district] of _____, do certify that E. F. [or,

E. F. and G. H., *and so forth*], whose name [or names] is [or, are] signed to the writing above [or, hereto annexed], bearing date on the day of , has [or, have] acknowledged the same before me, in my county [or, corporation] aforesaid.

GIVEN under my hand this day of .

If taken before a notary public, his certificate should contain the date of the expiration of his commission as notary.

173. Acknowledgment Before Commissioner.

(Ibid., § 2501.)

State [or, territory or, district] of , to-wit: I, , a commissioner appointed by the governor of the state of Virginia for the said state [or, territory or, district] of , certify that E. F. [or, E. F. and G. H., *and so forth*], whose name [or, names] is [or, are] signed to the writing above [or, hereto annexed], bearing date on the day of , has [or, have] acknowledged the same before me, in my state [or, territory or, district] aforesaid.

GIVEN under my hand this day of .

174. Acknowledgment by Person in Representative Capacity.

(Ibid., § 2501.)

State [or, territory or, district] of , county [or, corporation] of to-wit: I, , a [*here insert the official title of the person certifying the acknowledgment*] in and for the state [or, territory or, district] and county [or, corporation] aforesaid, do certify that [*here insert the name or names of the persons signing the writing on behalf of the person or corporation, or the name of the person signing the writing in a representative capacity*], whose name [or, names] is [or, are] signed to the writing above, bearing date on the day of , has [or, have] acknowledged the same before me in my county [or, corporation] aforesaid.

GIVEN under my hand this day of .

WASHINGTON.

1. *Seal*.—Not required. Ballinger's Code 1897, § 4523.

2. *Witnesses*.—Not necessary. Ibid., § 4518.

3. *Husband and wife*.—Husband has management and control of community real property but cannot sell or encumber same unless wife joins and acknowledges. Ibid., §§ 4490, 4491. Dower and curtesy abolished. Ibid., § 4495. Property and pecuniary rights of every married woman at time of marriage or afterward acquired by gift, devise or inheritance, with the rents, issues and profits thereof may be sold by her without husband's joining. Like rights of husband may be sold by him as though he was unmarried. Ibid., §§ 4488, 4489. Husband and wife may give, grant, sell or convey directly to the other his or her community right, title, interest or estate in all or any portion of their community real property. It then becomes separate property. Ibid., § 4539. Both husband and wife must join in conveyance or mortgage of homestead property. Ibid., § 5219.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Judges, clerks and deputy clerks of supreme and superior courts, justices of the peace, county auditors and their deputies, or a qualified notary public. *Ibid.*, § 4526. Court commissioners. *Ibid.*, §§ 4728, 4729.

(b) Without the state and within the United States: If in any form prescribed for executing and acknowledging deeds within the state of Washington, may be taken by any person authorized to take acknowledgments of deeds by the laws of the state or territory wherein acknowledgment is taken, or before any commissioner appointed by governor. *Ibid.*, §§ 4527, 260. Unless taken by a commissioner appointed by governor or by the clerk of a court of record of said state or territory, or by a notary public or other officer having a seal of office, there must be attached a certificate of the clerk of a court of record under the seal of said county or district, or a certificate of any other proper certifying officer of said district or county wherein said acknowledgment is taken, that the person taking acknowledgment was at the date thereof such officer as he therein represents himself to be, and that he is authorized by law to take acknowledgments of deeds and that he verily believes the signature of the person subscribed thereto to be genuine. *Ibid.*, § 4528.

(c) Without the United States: Before any United States minister plenipotentiary, secretary of legation, charge d'affaires, consul-general, consul, vice-consul or commercial agent, or before the proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein (*Ibid.*, § 4530), under his official seal, if he has any, and the certificate shall recite in substance that the deed, mortgage or instrument was acknowledged by the person or persons whose name or names are signed thereto as grantor or principal before him as such officer, with the date of such acknowledgment. *Ibid.*, § 4531.

5. *Forms.*—Prescribed by *ibid.*, § 4533.

175. Acknowledgment.

STATE OF WASHINGTON, }
County of , } *ss.*

I, [here give name of officer and official title], do hereby certify, that on this day of , 19 , personally appeared before me [name of grantor, and, if acknowledged by wife, her name, and add "his wife"], to me known to be the individual [or, individuals] described in and who executed the within instrument, and acknowledged that he [she, or, they] signed and sealed the same as his [her or, their] free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal, this day of , A. D. one thousand .

[SEAL.]

[Signature of officer.]

WEST VIRGINIA.

1. *Seal.*—Seal or scroll required, but the scroll may be written, printed or engraved by another. Code of 1906, § 291.

2. *Witnesses.*—Not required except to prove deed; otherwise two. *Ibid.*, § 3075.

3. *Husband and wife.*—Wife must join in husband's deed to convey dower, etc., but she may acknowledge with him or separately. *Ibid.*, § 3077. If wife at time of execution and acknowledgment of deed is living separate and apart from her husband or her husband be *non compos mentis*, and such deed be for her sole and separate real property, such fact shall be recited in the deed, and if her husband has not joined therein no officer shall take and certify the deed until it is proved to his satisfaction that such real estate is the sole and

separate property of such wife and that she was and is living separate and apart from her husband, and that her husband is *non compos mentis* at the date of such deed and its acknowledgment, and it shall be stated in the certificate that all of such facts were shown to the satisfaction of the person taking the same. Such certificate shall be *prima facie* evidence of the facts therein stated. *Ibid.*, §§ 3077, 3079. Dower and curtesy both exist.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Presidents of county courts. *Ibid.*, § 1200. Clerks of county courts of county in which deed is recorded, justices of the peace. *Ibid.*, § 1956. Notaries public. *Ibid.*, § 2194.

(b) Without the state and within the United States: Before a justice, notary public, under seal, recorder, prothonotary or clerk of any court within the United States or a commissioner appointed by the governor. *Ibid.*, §§ 3076, 3077.

(c) Without the United States: Under the official seal of any minister plenipotentiary, charge d'affaires, consul-general, consul, deputy consul, vice-consul, consular agent, vice-consular agent, commercial agent or vice-commercial agent appointed to any foreign country or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town or corporation therein, but notary without the state must certify under his official seal. *Ibid.*, § 3076.

5. *Forms.*—Prescribed by statute.

176. Acknowledgment.

STATE OF WEST VIRGINIA, County of _____, to-wit:

I [*here give name and official title*], do hereby certify that _____, whose name is signed to the writing above [*or, hereto annexed*] bearing date the _____ day of _____, 19____, has this day acknowledged the same before me in my said _____.

GIVEN under my hand and seal this _____ day of _____, 19____.

177. Acknowledgment Taken Outside of State.

(*Ibid.*, § 3076.)

STATE [territory, *or*, district] of _____, County of _____, to-wit:

I, _____, a commissioner, appointed by the governor of the state of West Virginia, for the said state [*or, territory, or, district*] of _____ [or, I, _____, a justice of the county aforesaid, or, I, _____, recorder of said county; or, I, _____, a notary of said county; or, I, _____, a prothonotary or clerk of the court of said county] do certify that _____, whose name [*or, names*] is [*or, are*] signed to the writing above [*or, hereto annexed*] bearing date on the _____ day of _____, has [*or, have*] this day acknowledged the same before me, in my said _____.

GIVEN under my hand this _____ day of _____.

178. Acknowledgment by Married Woman.

(*Ibid.*, § 3077.)

[*Where both acknowledge at the same time.*]

STATE [territory, *or*, district] of _____, County of _____, to-wit:

I, _____, a commissioner appointed by the governor of the state of West Virginia, for the said state of _____ [or, territory, *or*, district of _____], or, I,

, a justice of the peace of the said county of , or I, , a notary of the said county of , or I, , prothonotary [or, clerk] of the court or county of [or other officer or person authorized to take acknowledgments by section 3 of this chapter, as the case may be],* do certify that and , his wife, whose names are signed to the writing above [or, hereto annexed] bearing date the day of , 19 , have this day acknowledged the same before me in my said .
GIVEN under my hand this day of , 19 .

If the wife acknowledge separately from her husband, after the * in the foregoing form use the following:

"do certify that , the wife of , whose names are signed to the writing above [or, hereto annexed], bearing date the day of , 19 , has this day acknowledged the same before me in my said .
GIVEN under my hand this day of , 19 .

179. Acknowledgment by Corporation.

(Ibid., § 3078.)

Follow form 178 to the * and then as follows: do certify that personally appeared before me in my said , and being by me duly sworn [or, affirmed] did depose and say that he is the president [or other officer or agent] of the corporation [or, association], described in the writing above [or, hereto annexed], bearing date the day of , 19 . authorized by said corporation [or, association], to execute and acknowledge deeds and other writings of said corporation [or, association], and that the seal affixed to said writing is the corporate seal of said corporation [or, the seal of the said association, as the case may be], and that said writing was signed and sealed by him in behalf of said corporation [or, association] by its authority duly given. And the said acknowledged the said writing to be the act and deed of said corporation [or, association].*

[Signature and title of officer taking acknowledgment.]

WISCONSIN.

1. *Seal.*— Seal or scroll or L. s. required. Corporate seal and in case of land counter signature of secretary or clerk of corporation required. Statutes of 1898, §§ 2215, 2216, as amended by Laws of 1907, ch. 568.

2. *Witnesses.*— Two required. Ibid., § 2216, as amended 1907, ch. 568.

3. *Husband and wife.*— Must join in each other's conveyances. No separate acknowledgment required. Wife must join with husband to release homestead. Supp. 1906, § 2203, p. 1068, ch. 100. Curtesy and dower exist. Statutes of 1898, § 2276.

* If the corporation has no official seal, or the association has no seal, omit the words "seal affixed to said writing is the corporate seal of said corporation [or, the seal of said association, as the case may be]," and say "said corporation [or, association] has no seal." In such case omit the word "sealed" after the words "signed and," and insert in lieu the word "executed."

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Any judge or clerk of a court of record, court commissioner, county clerk, notary public, justice of the peace, police justice or United States court commissioner residing within this state, who shall file with the clerk of the circuit court of the county in which he resides his certificate of appointment as such commissioner, or a copy thereof certified by the clerk of the court which appointed him. Officer must attach official seal if he has one. *Ibid.*, § 2216, as amended Laws 1907, ch. 568, p. 552.

(b) Without the state and within the United States: According to the form given below or executed and acknowledged according to the laws of such state, territory or district, before and certified to by any judge or clerk of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of such state, territory or district to take acknowledgments, or before any commissioner appointed by the governor, and if executed within the jurisdiction of any military post of the United States not within this state, it may be acknowledged before and certified to by the commanding officer thereof. *Ibid.*, § 2218. A clerk of a court must attach the seal of the court, a notary must use his seal, or the commanding officer of a military post must have certificate of the clerk or other proper certifying officer of a court of record of the county or district wherein such acknowledgment was taken under the seal of his office, that such person was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and if such deed be executed and acknowledged according to the laws of such state, territory or district, such certificate shall state that fact. Or the certificate may certify that the deed was executed and acknowledged according to the laws of such state, territory or district in lieu of any other proof thereof. *Ibid.*, § 2219.

(c) Without the state: According to form of acknowledgment given below, or according to the laws of such country, before any notary public or other officer authorized by the laws of such country to take the acknowledgment of deeds, therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul of the United States appointed to reside therein. If before a notary public his seal of office shall be attached, and if such conveyance be executed and acknowledged according to the laws of such country, the certificate of acknowledgment shall certify that fact. *Ibid.*, § 2220.

5. *Forms.*—Prescribed by statute.

180. Acknowledgment by Husband and Wife.

(*Ibid.*, § 2217.)

STATE OF WISCONSIN, }
County, } ss.

Personally came before me this day of , 19 , the above [or, within] named A. B. and C. B., his wife [or, if an officer, adding the name of his office], to me known to be the person [or, persons] who executed the foregoing [or, within] instrument, and acknowledged the same.

[Name and official title.]

WYOMING.

1. *Seal.*—Private seals except those of corporations abolished. Revised Statutes 1899, § 2749.

2. *Witnesses.*—One witness required. *Ibid.*, § 2741.

3. *Husband and wife.*—A married woman may by her deed or mortgage convey her real estate in like manner as if she were unmarried. *Ibid.*, § 2732. If wife not residing in state shall join her husband in conveyance of real prop-

erty situated within state, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution by her may be made as if she were sole. *Ibid.*, § 2747. Curtesy and dower abolished, and statutory provisions substituted. *Ibid.*, § 4858.

4. *Officers before whom acknowledgments may be taken:*

(a) Within the state: Before any judge or clerk of a court of record, court commissioner appointed under the laws of the United States, county clerk, justice of the peace or notary public under his seal of office if he has any; clerks of the United States circuit and district courts for the district of Wyoming, under their hands and the seals of their courts. *Ibid.*, §§ 2741, 2742, 2743.

(b) Without the state and within the United States: Any officer authorized by law to take acknowledgment at the place where such acknowledgment is taken. If officer have no seal, there must be a certificate of the clerk of a court of record, or a county clerk, at the same place, having a seal, certifying that the officer taking the acknowledgment is authorized to take the same, and that he believes that the signature appended to the acknowledgment is genuine. Clerks of any court of record or court commissioners or county clerks. *Ibid.*, §§ 2744, 2745.

(c) Without the United States: Consuls-general, consuls or vice-consuls of United States under their official seal or the seal of the consulate to which they are attached, if there is any such seal, and in case consul has no official seal or seal of his consulate, that fact shall be stated in his certificate. *Ibid.*, § 2746.

5. *Forms.*—Prescribed by *ibid.*, § 2752.

181. Acknowledgment.

STATE OF [*name the state*],
County of [*name the county*], } ss.

I, [*here give the name of the officer and his official title*] do hereby certify that [*name of the grantor, and if acknowledged by a wife, her name, and add "his wife"*], personally known to me to be the same person whose name is [*or, are*] subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he [*she, or, they*] signed, sealed and delivered said instrument as his [*her, or, their*] free and voluntary act, for the uses and purposes therein set forth, [*with the following addition where the right of homestead is released*] including the release and waiver of the right of homestead.

Given under my hand and seal this [*day of the month*] day of [*month*], A. D. [*year*].

CHAPTER III.

ADOPTION OF MINORS.

NOTE.—This subject is regulated by statute. Adoption did not exist at common law, and all legislation on the subject is of rather recent date. To make adoption effectual, a strict compliance with the statutory provisions is always necessary. The provisions regulating this subject in New York state are contained in the Domestic Relations Law, §§ 110–118; Birdseye, C. & G. Cons. Laws, pp. 1074–1082; R. S., 2d ed., pp. 937–941, and are in brief as follows:

Voluntary adoption is any other than of an indigent child, or one who is a public charge, from an orphan asylum or charitable institution. An adult

unmarried person, or an adult husband or wife, or an adult husband and wife together, may adopt a minor.

Consent to adoption is necessary as follows: Of the minor, if over twelve years of age; of the foster-parent's husband or wife, unless lawfully separated, or unless they jointly adopt; of the parents or surviving parent of a legitimate child, or of the mother of an illegitimate child; but consent of parent who has abandoned the child, or is deprived of civil rights, or divorced because of adultery or cruelty, or adjudged insane, or an habitual drunkard, or judicially deprived of custody of child because of cruelty or neglect, is unnecessary.

Where child has no father or mother living, or whose consent is required as above, there must be consent of a person of full age, having lawful custody of the child, if any such person can be found, or otherwise the judge or surrogate shall recite such facts in the order allowing the adoption.

The foster-parent or parents, the minor, and all persons whose consent is necessary, must appear before the county judge or surrogate of the county where foster-parent resides, and be examined, except as stated below. They must present to such judge or surrogate an instrument containing substantially the consents required and agreement by foster-parent to adopt and treat the minor as his lawful child, and a statement of child's age as nearly as same can be ascertained. This instrument must be signed by foster-parent and each person whose consent is necessary, and severally acknowledged before judge or surrogate. But where the person whose consent is necessary resides or is located in some other state or county, consent may be acknowledged there and certified like deed there executed. The judge or surrogate's order and the instrument of consent must be filed and recorded in clerk's office of county where foster-parent resides.

After adoption, the minor's parents are relieved from all parental duties and responsibilities to it, and have no rights over child or property by descent or succession, but his rights of inheritance and succession from his natural parents remain unaffected. The child takes the name of foster-parent, and foster-parent and minor sustain toward each other the legal relation of parent and child, and have all rights and are subject to all duties of that relation, including right of inheritance from each other, and such right extends to heirs and next of kin of the minor, except that as respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster-parent dying without heirs, the minor is not deemed the child of the foster-parent to defeat the rights of remaindermen.

Where orphan asylums or charitable institutions are authorized to place children for adoption, the adoption must be given, if practicable, to persons of the same religious faith of the parents of such child, and is effected substantially as in case of voluntary adoption, except that officers of institution need not appear before county judge or surrogate to be examined.

Abrogation of voluntary adoption may be had if the foster-parent, the minor, and the persons whose consent was originally necessary appear before county judge or surrogate in county where foster-parent resides. If he is satisfied upon examination that abrogation of the adoption is desired by all parties concerned, and will be for best interests of minor, an agreement to that end must be executed by all parties, and the judge or surrogate must indorse hereon his consent to abrogation. Upon the filing and recording of such paper, the adoption is abrogated, and the child shall reassume its original name, and its parents or guardians may reassume such relations. Adoptions may be had, however, from foster-parents.

Where a minor has been adopted from orphan asylum or charitable institution, an application, upon verified petition, to county judge or surrogate where foster-parent resides may be made for abrogation of such adoption on the ground of cruelty, misusage, refusal of necessary provisions or clothing, inability to support, maintain or educate child, or other violation of duty on the part of foster-parent. Citations shall issue thereon to foster-parent and hearing shall be under the provisions of Code of Civil Procedure relating to citations out of surrogate's court. Such judge or court may compel the production of the minor's person, and upon return of citation may enter order abrogating the adoption. If one such petition has been denied, a further citation against same foster-parent is in the discretion of the judge or surrogate.

A foster-parent, adopting child from orphan asylum or charitable institution, may also present a verified petition for abrogation of adoption on the ground of wilful desertion, misdemeanor, or ill-behavior of such child, and a citation shall be issued by county judge or surrogate to corporation who consented to adoption, or, if such corporation does not then exist, to superintendent or the poor of such county. If corporation does not appear, a special guardian shall be appointed to protect interests of child, and the foster-parent shall pay such special guardian fees and necessary disbursements for contesting such application. The granting of the abrogation is in the discretion of the county court or surrogate.

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182. Petition for Voluntary Adoption.

Court,
County.

| |
|--|
| In the Matter of the Adoption of A. B., a minor, by C. D. |
|--|

The petition of C. D. respectfully shows to this court, as follows:

I. The above-named A. B. is a minor, born on or about November 19, 1885, and now of about the age of thirteen years.

II. The said A. B. is the legitimate child of E. B. and F. B. [of whom only E. B. survives] [*or*, the said A. B. is the illegitimate child of F. B.], in the county of _____, state of _____ [*or*, said A. B. is the legitimate child of E. B. and F. B., both of whom are dead, *or*, whose consent is not necessary under the statute, because the said parents have abandoned said minor, *or*, have been deprived of civil rights, *or*, has been divorced because of his adultery or cruelty, *or*, have been adjudged to be insane, *or*, have been adjudged to be habitual drunkards, *or*, have been judicially deprived of the custody of the child on account of ernelty or neglect], [*or*, said A. B. has no father or mother living, and no person can be found who has lawful custody of said A. B.].

III. Your petitioner is an adult married person, and resides at _____, in said county of _____, and state of New York, and G. D. is his adult wife, and consents to such adoption. [*If petitioner is an adult unmarried person, or if an adult husband and wife together petition for the adoption, so state.*]

Annexed hereto, and made a part hereof, is the consent of your petitioner, C. D., as foster-parent, and of his said wife, G. D., and of said A. B., the minor, and of the minor's said parents, E. B. and F. B. [*or*, such other persons as are by the statute required to give consent], all of which said persons are now present in court and prepared to be examined, as required by statute.

Annexed hereto and made a part hereof is also an agreement on the part

of your petitioner as such foster-parent to adopt and treat the said A. B. as his lawful child.

WHEREFORE, your petitioner prays for an order of this honorable court directing that the said A. B. shall henceforth be regarded and treated in all respects as the child of your petitioner, C. D., as such foster-parent.

Dated , .

183. Consent of Parties to the Adoption of Minor.

Court,
County.

In the Matter of the Adoption of }
A. B., a minor, by C. D. }

We, E. B. and F. B., the parents [or, E. B., the father, or, F. B., the mother] of A. B., the above-named and mentioned minor child, do hereby, pursuant to statute, consent to the adoption of said A. B. by C. D., of the town of , in the county of aforesaid.

In presence of [Signature of parents.]

County of , ss.

I certify that on this day of , 18 , before me personally came the above-named E. B. and F. B., to me personally known and known to me to be the individuals described in and who executed the foregoing consent, and duly acknowledged to me that they executed the same.

[Signature of county judge or surrogate.]

184. Consent of Person Having Lawful Custody of Child.

Court,
County.

In the Matter of the Adoption of }
A. B., a minor, by C. D. }

County of , ss.

I, , being duly sworn, do hereby state that I am a person of full age, and have the lawful custody of the above-named A. B., who is a minor of about years of age; that said minor has no father or mother living [or, no father or mother whose consent is necessary under the statute to the adoption of said child].

I hereby, pursuant to statute, consent to the adoption of said A. B. by C. D., of the town of , in the county of , and state of New York.

In presence of [Signature of person.]

[Acknowledgment as in Form No. 105.]

If parents do not reside in county where foster-parents reside, this should be so stated in consent.

185. Agreement of Foster-Parent to Adopt.

Court,
County.

In the Matter of the Adoption of

A. B., a minor, by C. D.

WHEREAS, C. D., being of full age, and residing at _____, in the county of _____, and state of New York, is desirous of adopting, in pursuance of the statute in such case made and provided, A. B., aged about thirteen years, and the minor child of E. B. and F. B., of said county; and,

WHEREAS, said C. D. has appeared before the undersigned, the county judge [or, surrogate] of _____ county, on the _____ day of _____, at the chambers of said court, at _____, in said county, and the said child and all the other persons whose consent is necessary to such adoption have appeared before the said county judge [or, surrogate], at said time and place, and the necessary consents have thereupon been signed and acknowledged;

NOW, THEREFORE, the said C. D. does hereby adopt the said A. B. as his lawful child, and does hereby covenant, promise and agree that said A. B. shall be in all respects henceforth treated as his own lawful child.

IN WITNESS WHEREOF, the said C. D. has hereunto set his hand, this day of _____,

In presence of

[Signature of foster-parent.]

[Acknowledgment in usual form, before county judge or surrogate.]

186. Order Confirming Adoption.

At a _____ term of the county court [or, surrogate's court] of the county of _____, held at _____, in said county, on the _____ day of _____,

Present.—

_____, county judge [or, surrogate].

In the Matter of the Adoption of

A. B., a minor, by C. D.

It appearing to my satisfaction by the annexed petition, statements, consents and agreement, that said A. B. is a minor, born on or about November 19, 1885, and now about thirteen years of age, and that said A. B. is the legitimate child of E. B. and F. B. [of whom E. B. only survives] [or other statement, according to the fact as set forth in the foregoing consent], and the written consent of said E. B. and F. B., the parents of said minor [or, recite the consents which are in fact added to the petition], having been duly made, verified and acknowledged before me and annexed hereto; and it appearing to my satisfaction that said C. D. is an adult married person, and resides at _____, in said county of _____, and that G. D. is his adult wife, and has duly consented to such adoption [if consent of foster-parent's husband or wife is not required, so state]; and it appearing to my satisfaction that said consents are all the consents required by statute, and all said parties having appeared before me and been examined; now, upon reading and filing the said consents, and the statement or petition of the said C. D., and the agreement of the said C. D.

to adopt and treat the said minor as his own lawful child [*if consent is made by an orphan asylum or charitable institution, so state*]; and it appearing to my satisfaction that the moral and temporal interests of said minor, A. B., will be promoted by such adoption by C. D., for the reason that [*here briefly state reasons*].

IT IS HEREBY ORDERED, that the said adoption of said A. B., a minor, by said C. D., shall be and the same hereby is allowed and confirmed for the reasons above stated, and it is further

ORDERED AND DIRECTED, that the said A. B., a minor, shall from this time forth be regarded and treated in all respects as the child of the said C. D., with all the rights, duties, liabilities and powers and legal relations towards each other which are prescribed by the Domestic Relations Law, or other statute in such case made or provided;

AND I DO FURTHER ORDER AND DIRECT that this order, and the said petition and consents be filed and recorded in the office of the clerk of the county of

187. Agreement for Abrogation of Adoption and Order Thereon.

Court,
County.

| |
|--|
| <p>In the Matter of the Adoption of A. B., a minor, by C. D.</p> |
|--|

AGREEMENT made this day of , , between C. D., foster-parent, A. B., a minor, and E. F. and F. B., the parents of said A. B. [*or, the person whose consent would have been necessary for the original adoption*]: WITNESSETH:

WHEREAS, The said A. B. is the legitimate child of E. B. and F. B. [*or, is the illegitimate child of F. B.*]; and,

WHEREAS, Upon proceedings duly had under an order of the county judge [*or, surrogate*] of the county of , duly filed and entered in the office of the clerk of said county, on the day of , , the said C. D., as foster-parent, did duly adopt the said A. B. as his child, and by an agreement duly made according to statute, did covenant, promise and agree that the said A. B. should in all respects thenceforth be treated as the lawful child of said C. D.; and,

WHEREAS, All the parties hereto have duly appeared before Honorable , the county judge [*or, surrogate*] of the county of , where the foster-parent resides, and have desired that the said adoption of said A. B. by C. D. should be abrogated according to statute in such case made and provided.

Now, IT IS HEREBY AGREED, that the said C. D., as foster-parent, and the said A. B., as minor, mutually agree to relinquish the relation of parent and child, and all the rights acquired by the adoption aforesaid; and the said E. B. and F. B. [*or other person, or the institution formerly having custody of the said A. B.*] hereby agree to reassume such relation as aforesaid.

IN WITNESS WHEREOF, the said parties have hereunto set their hands, this day of ,

[*Signatures of parties.*]

In presence of

188. Acknowledgment Before County Judge or Surrogate.

Indorsement to be made upon agreement by county judge or surrogate.

[*Same title as in last preceding form.*]

C. D., the foster-parent, A. B., the minor, and E. B. and F. B., the parents of said A. B. [*or other proper persons*], having duly appeared before me, and having been duly examined by me as to the proposed abrogation of the adoption made herein by an order made and entered in the office of the clerk of the county of _____, on the _____ day of _____, ; and it appearing to my satisfaction that it would be for the best interests of the minor, I do hereby consent to the abrogation of the said adoption as recited in the within instrument, and I do hereby direct that the said agreement and this consent be filed and recorded in the office of the clerk of the county of _____, being the county where the foster-parent resides, and that a copy thereof be filed and recorded in the office of the county clerk of the county where said E. B. and F. B. [*or other proper person consenting to such agreement*] reside [*or, where the _____ institution is located*].

189. Application on Behalf of Minor Adopted from Orphan Asylum or Charitable Institution to Abrogate Adoption.

Court,
County.

| |
|--|
| <p>In the Matter of the Adoption of A. B., a minor, by C. D.</p> |
|--|

The petition of A. B. [*or any person on behalf of said child*] respectfully shows to this court:

That the said A. B. is a minor, born on or about November 19, 1885, and now about the age of _____ years; that on or about the _____ day of _____, 189____, in proceedings duly had before the county judge [*or, surrogate*] of the county of _____, an order was duly made, which was filed and entered in the office of the clerk of said county on or about the _____ day of _____, 18____, wherein and whereby the said A. B., a minor, was adopted by C. D., who resided at _____, in the county of _____; that thereupon said C. D. and A. B. assumed the mutual relations of parent and child, and the said A. B. became known by the name of _____; that the foster-parent resides at _____, in the county of _____; that because of the cruelty [*or, misuse, refusal of necessary provisions or clothing, or inability to support, maintain or educate such child, or for any violation of duty upon the part of such foster-parent towards such child, reciting the facts*], your petitioner desires that the said adoption may be abrogated, and that to that end a citation may be issued hereon by the county judge [*or, surrogate*], requiring such foster-parent to show cause why said petition and this application for abrogation should not be granted; that no other application has been made for this or a similar citation.

[*Signature of petitioner.*]

County of _____, ss.

_____, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated

to be alleged upon information and belief, and that as to those matters he believes it to be true.

[*Signature of petitioner.*]

Sworn to before me, this
day of , 18 .

[*Signature of county judge or surrogate.*]

The proceedings for the issuing and service of the citation, and the hearing on the return thereof, the attendance of witnesses, and other proceedings, are governed by the provisions of the Code of Civil Procedure in relation to citations out of surrogates' courts.

190. Application on Behalf of Foster-Parent to Abrogate Adoption from Orphan Asylum or Charitable Institution.

Court,
County.

| |
|--|
| <p>In the Matter of the Adoption of A. B., a minor, by C. D.</p> |
|--|

The petition of C. D., the foster-parent above named, respectfully shows to this court:

That the said A. B. is a minor, born on or about November 19, 1885, and now about the age of years; that on or about the day of , 18 , in proceedings duly had before the county judge [*or, surrogate*] of the county of , an order was duly made, which was filed and entered in the office of the clerk of said county on or about the day of , 18 , wherein and whereby said A. B., a minor, was adopted by C. D., who resided at , in the county of ; that such adoption was made from [*here state name of the orphan asylum or charitable institution*]; that thereupon said C. D. and A. B. assumed the mutual relations of parent and child, and the said A. B. became known by the name of ; that your petitioner resides at , in the county of ; that because of the wilful desertion of said A. B. from your petitioner, as such foster-parent [*or, of any misdemeanor or ill-behavior of the minor, stating particulars*], your petitioner desires that said adoption shall be abrogated, and that to that end a citation may be issued hereon by the county judge [*or, surrogate*], directed to such child and to the said [*name of corporation, or if corporation does not exist, to the superintendent of the poor*], requiring them to show cause why said petition and this application for abrogation should not be granted; that no application has been made for this or a similar citation.

[*Signature of petitioner.*]

[*Verification as in Form No. 189.*]

If a corporation does not appear, a special guardian should be appointed according to the Code of Civil Procedure, to protect the interests of the infant.

The other proceedings are as stated in the note to Form No. 189.

CHAPTER IV.

AFFIDAVITS.

NOTE.—The following are the usual requisites in affidavits:

Affidavits should be entitled in the action or proceeding, but it is frequently provided by statute that the want of a title or a defect in the title does not impair the affidavit, if it intelligibly refers to the action or special proceeding in which it is made. See N. Y. Code Civ. Pro., § 728; Code Crim. Pro., § 683.

The names of all the deponents should be mentioned, and where the affidavit is made by several, it should be shown that the deponents were severally sworn.

Where the description or residence of the deponent is material to the affidavit, it should be directly alleged.

An affidavit should be subscribed by the deponent. The jurat should state the day on which it was sworn. The venue sufficiently shows the place where the affidavit was taken, and if it thereby appears that the affidavit was taken at a place beyond that where the officer was authorized to act, it will not be received by the court. The jurat should be subscribed by the officer with his official designation.

| | |
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191. Common Form.

[Title of suit, or other legal proceedings, if made in such.]

STATE OF , }
 County of , } ss.

I, A. B., of , being duly sworn [or, affirmed], do depose and say as follows:

I am, etc. [here set forth allegations in first person.]
[Signature of deponent.]

Sworn to [or, affirmed] before me,
 this day of , .
[Signature of officer.]

192. Affidavit to Copies of Papers.

STATE OF , }
 County of , } ss.

I, A. B., of , being duly sworn [or, affirmed], do depose and say as follows:

I have carefully compared and found the annexed writing, in pages, to agree with and to be true copies of, and of the whole of [or, copies and extracts from] sundry original letters signed by C. D., and E. F. & Co., of , in the state of , one purporting to be signed by G. H., of ; and also of sundry original accounts between the said C. D. and E. F. & Co., signed by the said C. D., all of which original papers are now produced.

[Signature of deponent.]

Sworn to [or, affirmed] before me,
 this day of , .
[Signature of officer.]

193. Affidavit to be Used Abroad.

STATE OF _____
 County of _____, } ss.

BE IT KNOWN, that on this _____ day of _____, before me, A. B., notary public for the commonwealth of _____, residing in the _____ of _____, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared C. D., of _____, and who being by me duly sworn [or, affirmed], did depose and say [*here set forth the allegations*]; and further deponent saith not.

[*Signature of deponent.*]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of office, the day and year first above written.

[SEAL.]

[*Signature and title.*]

CHAPTER V.

APPOINTMENTS.

APPOINTMENTS are of two kinds: 1. The conferring an authority to perform duties or to act for another, such as the appointment of a guardian or an attorney. 2. The declaration of an act or transfer in execution of a power.

Appointments of the former kind are usually to be executed with the same formalities as are used in the execution of conveyances, for which see the chapter on ACKNOWLEDGMENT AND PROOF OF DEEDS. For forms of appointments of attorneys and trustees, see the chapters on POWERS OF ATTORNEY, and on TRUSTS, respectively.

In regard to appointments in execution of powers, it is to be observed that the American law and usage renders resort to this class of instruments comparatively rare; but in many of the states the subject is regulated more or less by statute, the chief effect of which, so far as the forms of attestation are concerned, is to relax the very strict rules of the common law, requiring all incidental circumstances directed by the grantor of the power to be most rigidly observed in the execution of it; and we apprehend that the usual American rule is, that such an appointment must be executed with the formalities required by law to pass such an estate, and that these are sufficient, even though the grantor may have prescribed less or more formalities.

It is not necessary that an appointment should recite, or even refer to the power, provided the act shows that the decree had in view the subject of the power, and intended to execute the power.

| | |
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I. APPOINTMENTS TO PERFORM DUTIES, ETC.

As to general provisions of New York state relating to guardians, see Domestic Relations Law, §§ 80-88; Birdseye, C. & G. Cons. Laws, pp. 1064-

1075. As to acknowledgment, see Code Civ. Pro., § 2851. See also chapter on GUARDIAN AND WARD.

194. Appointment of a Guardian, by a Minor.

KNOW ALL MEN BY THESE PRESENTS, that I, C. B., of _____, son and heir of A. B., late of _____, deceased, being above the age of fourteen years — namely, about the age of _____ years — have nominated, elected, chosen, and appointed, and by these presents do nominate, elect, choose, and appoint C. D., of _____, to be guardian as well of my person as of my real and personal estate, until I shall attain the age of twenty-one years.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____,

[Signature and seal.]

In presence of

[Signature of witnesses.]

[Acknowledgment.]

195. Appointment of a Guardian, by a Father, for a Son.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, farmer, have committed and disposed, and by these presents do commit and dispose, the custody, tuition, and education of my son, C. B., to Y. Z., of said town, whom I do hereby appoint his guardian; this appointment and disposal to take effect immediately, and henceforth [or, from and immediately after my decease and thenceforth] to continue during the minority of my said son [or such other time as may be fixed].

[To provide for the guardian's death, may add:] And if it shall happen that the said Y. Z. dies before me, or before my said son attains the age of twenty-one years, then and in such case I do commit and dispose unto W. X., of _____, such custody, tuition, and education and guardianship, after my decease, and the decease of the said Y. Z., until my said son attains the age of twenty-one years.

[Signature and seal.]

In presence of

[Signature of witness.]

[Acknowledgment.]

196. Appointment of a Guardian by a Will.

(Code Civ. Pro., §§ 2851-2860.)

[Insert in the will — see forms on chapter of WILLS] — And in case I shall leave any child, or children, living at the time of my decease, under age and unmarried, my will is, and I do appoint, that my beloved wife shall have the guardianship, custody, and tuition of them during their minority [so long as she shall continue to be sole]; and, in case of her death [or, marriage] during the minority of such, my children, then I will and appoint that my friend M. N., one of my executors, shall have the guardianship, custody, and tuition of them during such their minority. And in case of his refusal, renunciation, or decease, I will and appoint that my friend, my other executor, O. P., shall exercise the said guardianship, custody, and control. [Here add any special directions — e. g., thus:] And I earnestly entreat their utmost care, respectively, in and about the morals and education of such children, and desire that they may be brought up and instructed in the doctrines and religion of the church.

II. APPOINTMENTS IN EXECUTION OF POWERS.

For agreements giving right to make appointment, see chapters on MARRIAGE SETTLEMENT, and WILLS, *post*, and General Index.

197. By a Wife, of Real Property, by Grant to Take Effect upon Her Death.

THIS INDENTURE, made this day of , , between C. B., of , wife of A. B., clergyman, party of the first part; D. E., of , the brother of the said C. B., party of the second part; and F. G., of , merchant, party of the third part:

WHEREAS, by an indenture in , parts, bearing date on the day of , made between the said C. B., by her then name of C. E., of the first part [*here proceed to recite the settlement, or other deed, by which the power to appoint was reserved, and any facts on which its execution depends; continuing:*]

NOW THIS INDENTURE WITNESSETH, that the said C. B., the party hereto of the first part, by virtue of the power of appointment limited to her in the before-recited instrument, and of all and every other power and authority in that behalf given or reserved, in her vested, or her in anywise thereto enabling, doth limit and appoint all that [*etc., describing the real property*] to the use of the said F. G., for the term of his natural life, to take effect immediately after the death of the said party of the first part. And the said party of the first part doth, by this [*here describe the formalities prescribed by the instrument creating the power, and by law, e. g., thus:*] her deed in writing, under seal, and executed and delivered in the presence of one subscribing witness, whose name it is intended shall be written hereon as a witness attesting the same, and by her, the said C. B., to be duly acknowledged according to law, and with the consent of the said party of the second part hereunto, testified by his uniting in the execution of these presents as a party thereto, declare, limit, and appoint the said [trustees] and their successors and heirs, and all other persons seized of the said premises, or any part thereof, to stand seizēd of the same described real property, hereinbefore limited to the use of the said C. B., as aforesaid, to the use of the said F. G. for and during the term of his natural life, to take effect immediately after the decease of the said party of the first part.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Executed and delivered in the presence of

[*Signature of witness.*]

[*Acknowledgment.*]

C. B. [SEAL.]

D. E. [SEAL.]

F. G. [SEAL.]

198. The Same, by Will.

[*Insert in the will — see forms in chapter on WILLS*] — And I further declare it to be my will as follows — that is to say:

WHEREAS [*here recite the settlement or other instrument by which the power to appoint was reserved, and any facts on which its execution depends; continuing:*] Now, therefore, I do will, devise, and direct, and by virtue of the power of appointment limited to me in the before-recited instrument, and of all and every other power and authority in that behalf given or reserved, in me vested, or me in anywise thereto enabling, do limit and appoint, all that [*etc., describing the real property*] to the use of the said F. G., for the term

of his natural life, to take effect immediately after my death. And I do by this my last will and testament in writing [and under seal], and executed, acknowledged, and published in the presence of two subscribing witnesses, whose names it is intended shall be written hereon as witnesses attesting the same according to law, and with the consent of the said party of the second part, hereunto testified and certified by him by a writing indorsed hereon, under his hand and seal [and duly to be proved or acknowledged according to law], declare, limit, and appoint the said [trustees] and their said successors and heirs, and all other persons seized of the said premises, or any part thereof, to stand seized of the same described real property hereinbefore limited to the use of the said C. B., as aforesaid, to the use of the said F. G., for and during the term of his natural life, to take effect immediately after my decease.

199. Consent, to be Indorsed on the Foregoing.

TO ALL TO WHOM THESE PRESENTS MAY COME:

KNOW YE, that I, D. E., of _____, brother of C. B., the testator described in, and who executed the within will, do hereby consent to and approve of, and testify and certify my consent and approval to, the appointment declared and limited in the _____ paragraph of said will, according to the terms thereof.

IN WITNESS WHEREOF, I have hereunto set my hand [and seal], this day of _____,

In presence of _____

D. E. [SEAL.]

[Signature of witness.]

[Acknowledgment.]

200. By a Wife, for the Sale of Stocks, under a Power Reserved to Her in a Marriage Settlement.

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, C. B., WIFE OF A. B., OF _____, SENDS GREETING:

WHEREAS, by indenture tripartite, bearing date the _____ day of _____, made between the said C. B., by her then name and addition of C. E., of _____, spinster, of the first part, the said A. B. of the second part, and W. M. and J. B. of the third part, it was agreed by the said parties that the said W. M. and J. B., amongst other things, should stand possessed of _____ shares of the capital stock in the Bank of _____, in the said indenture mentioned [to have been transferred on the day of the date thereof, to the said W. M. and J. B. by the said C. B.], and all dividends, interest, and profits thereon, in trust for the sole and separate use of the said C. B., free from the interference, control, debts, contracts, and engagements of the said A. B., and in trust, from time to time to pay to, or permit the said C. B., during her lifetime, to enjoy, sell, give away, spend, or dispose of the same, or any part thereof, in like manner to all intents as the said C. B. might have done if she had remained sole and unmarried; and in trust, to transfer the same to such person or persons as she, the said C. B., by her last will and testament, or any other writing or writings, under her hand and seal, properly attested, should direct and appoint:

NOW KNOW YE, that the said C. B., by virtue and in pursuance of the said powers and limitations, and in pursuance of every other power and authority in that behalf given or reserved, in her vested, or her in any wise thereto enabling, doth direct and appoint the said W. M. and J. B., as soon as conveniently may be, at the market price, to sell and dispose of _____ shares of the

said capital stock, standing in their names as aforesaid; and the moneys arising by such sale, together with the dividends or profits accrued thereon, after deducting the costs and charges of such sale, to pay to her, the said C. B., to her sole and separate use, according to the limitations, trusts, and true intent of the said indenture.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day
of , .

In presence of

C. B. [SEAL.]

[*Signature of witness.*]

[*Acknowledgment.*]

201. Reservation of Power to Revoke and Appoint Anew, which May be Inserted in an Appointment.

PROVIDED ALWAYS, nevertheless, that it shall be lawful for the said C. B. at any time during her natural life, whether covert or sole, by any deed or writing under her hand and seal, duly attested by a subscribing witness [*or, by her last will and testament, or other writing in nature thereof, duly attested by two subscribing witnesses*], according to law, to alter, change, revoke, make null and void, the said use and uses, estate and estates, hereby limited or created, of and in the said property hereinbefore described, or any part thereof; and by the same deed or writing [*or, by such last will and testament, or writing in the nature thereof*], attested as aforesaid, to create, limit, appoint, or declare any other use or uses, estate or estates, trust or trusts, of and in the same premises, and every or any part thereof, in such manner and form as the said C. B. shall think fit and convenient.

III. APPOINTMENT IN PURSUANCE OF STATUTE.

NOTE.—In many of the states, foreign corporations are required to appoint resident attorneys, on whom legal process may be served; *e. g.*, in New York, section 34 of the Banking Law and section 30 of the Insurance Law require such a corporation to appoint the superintendent of banking or insurance, respectively, and sections 15 and 16 of the General Corporation Law require foreign corporations, other than a moneyed corporation, to designate such an attorney. Birdseye, C. & G. Cons. Laws, pp. 334, 2530, 1979, 1985.

202. Appointment of an Attorney.

KNOW ALL MEN BY THESE PRESENTS, that the Company, a corporation duly organized and existing under the laws of the state of , now authorized or having applied for authority to transact business in the state of , in conformity with the statutes thereof in such case made and provided, does hereby make, constitute and appoint [*or, the superintendent of insurance of said state, or his successor in office*], its true and lawful attorney in and for the state of , on whom process of law, whether *mesne* or final, against said may be served in any action or special proceedings in the state of , subject to and in accordance with all the provisions of the statutes in such case made and provided [*or, of the Insurance Law of said state, and any acts that may be hereafter passed amendatory thereof and supplementary hereto.*] Said attorney is hereby duly authorized and empowered, as the attorney and agent of said , to receive and accept service of process in all cases, as provided for by law, and such service shall be deemed valid, personal service upon said Company. This appointment is to continue in force for the period of time and in the manner appointed by the statutes aforesaid.

IN WITNESS WHEREOF, the said _____ Company, in accordance with the resolution of the board of directors, duly passed on the _____ day of _____, [a certified copy of which is hereto annexed], has caused these presents to be signed in its name by its president, and has affixed hereto its corporate seal attested by its secretary, at the city of _____, in the state of _____, on the day of _____,

[SEAL.] _____ Company,
 Attest: _____, Secretary. By _____, President.

CITY OF _____ }
 County of _____ } ss.

On this _____ day of _____, _____, before me, the subscriber, _____, duly authorized to take the proof and acknowledgment of deeds and other instruments, came _____, president, and _____, secretary, of the _____ Company, to me personally known, and known to me to be the individuals described in and who executed the foregoing instrument, and they severally duly acknowledged the execution of the same, and being by me duly sworn, they did severally, and each for himself, depose and say, that they are the said officers of the company aforesaid, and that the seal affixed to the foregoing instrument is the corporate seal of the said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said _____ Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at the city of _____, in the state of _____, on the day and year first above written.

CHAPTER VI.
 APPRENTICES.

APPRENTICES are a species of servants, so called from *Apprendre*, to learn; and the term is usually taken to mean a minor, bound for a term of years, or until he attains majority, by indenture or sealed contract, to serve a master, by whom he is to be both maintained and instructed.

In general, and without any statute regulation, a contract of service made by a minor will not be held valid unless, in the particular case, it appears, in its terms and in the circumstances under which it was made, to be reasonable and beneficial to the minor. But a father, who is entitled to the services of his minor son, and for whom he is obliged to provide, may assign those services to others, for a consideration to inure to himself, and may contract that his minor son shall labor in the service and employment of others for any term which does not exceed the period of the child's emancipation from the father, which may take place as well on the father's death as on the son's arriving at the age of twenty-one years.

The Statute.— This subject was regulated in England by a statute enacted in the time of Queen Elizabeth, which prescribed the modes in which such contracts should be made, and declared all contracts by which minors should be bound in service to be illegal, unless made pursuant to the statute.

This statute has been in part adopted in most of the states in this country as the basis of a system of apprenticeship, the general features of which are, that a minor, with the consent of his father,—or, if the father is dead or incapacitated to act, or has abandoned the family, the consent of the mother; or, if she cannot act, or refuses, that of the guardian; or, if there is no guardian, that of certain magistrates designated by statute,—may be bound to service, by writing, to a master, who shall by the contract undertake to maintain the apprentice, and to teach him his trade. Various special provisions for the

security of either party are made by different statutes in the different states. Unless the statute declares other contracts than those so made to be void, others may be valid also, but if broken can only be enforced by action at law; whereas contracts made pursuant to the statute may be summarily and specifically enforced, by either party, by an application to the proper magistrate, who may punish a refractory or unfaithful apprentice or an unjust master; and in proper cases may discharge the apprentice, and compel the master to refund any money he received with him.

An old common-law form of apprenticeship, actually used in the state of Rhode Island, and which covers practically all the common-law rights and provisions, is given below; also the forms under the Domestic Relations Law of the state of New York, §§ 120-127; Birdseye, C. & G. Cons. Laws, pp. 1082-1087.

The provisions of this law are substantially as follows: The indenture of apprenticeship must contain the names of the parties, the age of the minor, the nature of the service or employment, the term of service, an agreement that the minor will not leave his master during that term, and that the master will provide suitable and proper board, lodging and medical attendance, or pay to such apprentice, or his parent or guardian for him, a sufficient sum therefor; a statement of every sum of money paid or agreed to be paid in relation to the service; if the minor is bound as an apprentice to learn a trade or craft, an agreement on the employer's part to teach or cause to be carefully and skillfully taught to such apprentice every branch of such business, and, at the expiration of the apprenticeship, to give a certificate in writing that the apprentice has served his full term of apprenticeship. If minor is indentured by poor officers, or by authorities of orphan asylum, penal or charitable institution, there must be an agreement to cause the child to be instructed in reading, writing and general rules of arithmetic, and that at the expiration of the term the master will give the minor a new bible. Every indenture of apprenticeship must be filed in the office of the clerk of the county where master resides.

Any minor may, by the execution of such agreement, bind himself as an apprentice to learn any trade or craft for not less than three nor more than five years, or as a servant or clerk in any profession, trade or employment for a term not longer than the minority of such minor, unless the minor comes from a foreign country, when, for the purpose of paying his passage, the indenture may be made for a term of one year, even if such term extends beyond the majority of the minor. Such indenture must be signed by the minor, his father (unless he is legally incapable of giving consent or has abandoned his family), by the mother (unless she is legally incapable of giving consent), by the guardian of the minor's person, if any. If there are neither parents nor guardian legally capable of giving consent, by the county judge of the county or a supreme court justice of the district in which the minor resides. The county judge of the county, or a supreme court justice of the district, must consent to the apprenticeship of a minor coming from a foreign country, or of a child of an Indian woman. The consent must also be signed by the master or employer. If a municipal corporation apprentices a minor, the indenture must be signed by the officers apprenticing the minor, by the master or employer, and by the county judge if the support of such child was chargeable to the county, by two justices of the peace if chargeable to the town, or by the mayor and aldermen, or any two of them, if chargeable to a city. The poor officers by whom a child is indentured, and their successors in office, shall be guardians of such child, and shall inquire into its treatment and redress any grievance. Orphan asylums or charitable institutions must, when practicable, apprentice to persons of the same religious faith as the minor's parents, and the indenture must then be signed in the corporate name of such institution by the officer or officers authorized to sign the corporate name, and be sealed with the corporate seal, and must also be signed by the master or employer, and may be signed by the child if over twelve years of age.

If the master or employer fails during the term of service to perform provisions of indenture, the minor, or anyone on his behalf, may sue to have indenture canceled, and for not more than \$1,000, nor less than \$100 damages, to be paid to the minor's parents or guardian, or to the institution or poor officers, for the benefit of the child.

Where a minor has been indentured by poor officers, and the master or employer dies, his personal representatives may, with the written and acknowledged consent of such poor officers, assign the indenture; or, if such consent be refused, the assignment may be made by the county judge on fourteen days' notice to the minor and his parent or guardian, and such poor officers.

Contracts with apprentices in restraint of trade are void.

I. THE CONTRACT OF APPRENTICESHIP.

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I. THE CONTRACT OF APPRENTICESHIP.

203. Common Law Agreement.

THIS INDENTURE witnesseth that E. H., an infant under the age of twenty-one years, the son of J. H., of Providence, in the state of Rhode Island and Providence Plantations, an yeoman, hath put himself, and by these presents doth voluntarily and of his own free will and accord, and with the consent of his aforesaid father, J. H., put and bind himself apprentice to J. O., of Smithfield, in the state aforesaid, to learn the art, trade or mystery of a wheelwright, after the manner of an apprentice, to serve from the day of the date of these presents ten years nine months and twenty-four days, to be complete and ended. During all which said term the said apprentice his master faithfully shall serve, his secrets keep, his lawful commands gladly obey. He shall do no damage to his said master, nor see it done by other, without letting or giving notice thereof to his said master. He shall not waste his said master's goods, nor lend them unlawfully to any. He shall not commit fornication, nor contract matrimony within said term.

At card, dice, or any other unlawful game, he shall not play, whereby his said master may have damage from his own goods, or the goods of others. He shall not absent himself by day or by night without his said master's leave, or haunt alehouses, taverns or playhouses, but in all things behave himself as a good and faithful apprentice ought to do towards his said master.

AND he, the said master, for himself, executors and administrators, does hereby promise to teach and instruct, or cause the said apprentice to be taught and instructed, in the art, trade or calling of a wheelwright by the best way and means he can, and to provide for said apprentice good and sufficient meat, drink and apparel, both in sickness and in health, and lodging and washing and other necessary fitting for such an apprentice.

AND at the expiration of said time abovesaid, the said master to dismiss said apprentice with one new suit of apparel for all parts of his body, both woolen

and linen, fitting for such an apprentice, besides his wearing apparel, and likewise to learn said apprentice to read, write, and cipher as far as the rule of three.

IN WITNESS WHEREOF, we, the parties, do hereunto interchangeably set our hands and seals, the eighteenth day of June, A. D. 1777.

Signed, sealed and delivered in presence of

J. O. [L. s.]

A. Y.,

J. H. [L. s.]

E. O.

204. Contract of Apprenticeship.

THIS INDENTURE, made this day of , , by and between A. B., a minor, residing at , in the county of , and state of New York, hereinafter called the apprentice, party of the first part, and E. B., of the same place, father of said A. B., party of the second part, and C. D., of the town of , in the county of , and state of New York, hereinafter called the master, party of the third part:

WITNESSETH, that the said A. B., who is a minor, of the age of years, with the consent of said E. B., his father, which is evidenced by the joining of said E. B. in this instrument, * does hereby, of his own free will, bind himself to serve said C. D., as apprentice [*or, clerk, or, servant*], in the trade of wheelwright [*or other trade, profession or employment, according to the fact*], for the term of years, months and days from the day of the date of these presents; that is to say: said term is to commence on the day of , and is to end on the day of , 19 , and the said apprentice hereby agrees that during all of said term he will faithfully, honestly and industriously serve his master, his secrets keep, his lawful commands obey, and at all times protect and preserve the goods and property of said master, and not suffer or allow any to be injured or wasted, and that he will not do or commit any act or thing by which the goods or property of the said master shall be injured or destroyed, but will in all things behave himself as a good and faithful apprentice ought to do towards his said master, and that he will not leave his master during the term for which he is indentured; and the said master, upon his part, agrees that he will provide suitable and proper board, lodging and medical attendance for the minor during the continuance of the term [*or, that he will pay to such apprentice, or, to his parent, or, guardian for him, the sum of \$ per week, to provide for the suitable and proper board, lodging and medical attendance of the said apprentice*] [*here state fully any sum of money to be paid, or agreed to be paid, in relation to said service*].

And the said master further agrees that he will teach, or cause to be carefully and skillfully taught, to such apprentice every branch of the business of wheelwright to which such apprentice is indentured, and that at the expiration of such apprenticeship he will give to such apprentice a certificate in writing that such apprentice has served at such trade or craft a full term of apprenticeship, as specified in this indenture.

And for the true performance of all and singular the covenants and agreements herein contained, and the matters required or arising under the statute in such case made and provided, the said parties hereto severally bind themselves.

IN WITNESS WHEREOF, the several parties have hereunto set their hands and seals, the day and year first above written.

[Signatures and seals of apprentice, father, and master.]

[Acknowledgment.]

205. Indenture with Consent of Mother.

THIS INDENTURE, made this day of , , by and between A. B., a minor, residing at , in the county of , and state of New York, hereinafter called the apprentice, party of the first part, and F. B., of the same place, mother of said A. B., party of the second part, the father of said A. B. being legally incapable of giving consent [*or, having abandoned his family, or, being dead*], and C. D., of the town of , in the county of , and state of New York, hereinafter called the master, party of the third part:

WITNESSETH, That the said A. B., who is a minor, of the age of years, with the consent of F. B., his mother, which is evidenced by the joining of said F. B. in this instrument [*thence continue as in the preceding form from the *:*]

206. Consent of Guardian, where Parent's Consent is not Given.

THIS INDENTURE, made this day of , , by and between A. B., a minor, residing at , in the county of , and state of New York, hereinafter called the apprentice, party of the first part, and M. N., the duly appointed guardian of said A. B., of the same place, party of the second part, the father and mother of said A. B. being dead [*or, the father of said A. B. being dead and the mother of said A. B. refusing her consent to the said indenture of apprenticeship*], and C. D., of the town of , and county of , and state of New York, hereinafter called the master, party of the third part:

WITNESSETH, That the said A. B., who is a minor, of years, with the consent of said M. N., as guardian, as aforesaid, which is evidenced by the joining of M. N. in this instrument [*here continue as in Form No. 166, from the *:*]

207. Consent of County Judge or Supreme Court Justice where Minor Comes from Foreign Country or is the Child of an Indian Woman.

I, J. K., county judge of county, in which A. B. resides [*or, a justice of the supreme court in and for the judicial district in which the minor A. B. resides*], do hereby consent to the execution and delivery of the within indenture of apprenticeship between A. B., of , in the county of , and state of New York, as apprentice, party of the first part, and , party of the second part, and C. D., of , in the county of . and state of New York, as master, party of the third part.

Dated , .

[*Signature of county judge or justice.*]

208. Indenture by Poor Officers.

THIS INDENTURE, made this day of , , by and between , superintendent of the poor [*or other proper officer having charge of indenture, as required by statute*], party of the first part, and C. D., of , in the county of , and state of New York, hereinafter called the master, party of the second part, and by , [county judge, or, two justices of the peace, or, the mayor and aldermen, or, two of them, as required by statute]:

WHEREAS, the said A. B., who is a minor, of the age of years, and is legally under the control of the county of [*or, town of , or, city of , as the case may be*], and whom the parties of the first part hereto desire to apprentice and bind out to the said C. D., as master, as hereinafter stated:

WITNESSETH, That the said parties of the first part have by these presents, according to the statute in such case made and provided, apprenticed and bound out the said A. B. to serve the said C. D., as apprentice [or, clerk, or, servant], in the trade of wheelwright [or other trade, profession or employment, according to the fact], for the term of years, months and days from the day of the date of these presents; that is to say: Said term is to commence on the day of , , and is to end on the day of , 19 ; and the said party of the first part hereby agrees that during the term of said apprenticeship the said A. B. shall faithfully, honestly and industriously serve his master, his secrets keep, his lawful commands obey, and in all things behave himself as a good and faithful apprentice ought to do towards his said master, and that said A. B. will not leave his master during the term for which he is indentured, and the said C. D., as such master, upon his part agrees that he will provide suitable and proper board, lodging and medical attendance for the minor during the continuance of the term [*here state fully any sum of money which is to be paid or agreed to be paid in relation to said service*], and the said master further agrees that he will teach or cause to be carefully and skillfully taught to such apprentice every branch of the business of wheelwright to which such apprentice is indentured, and that, at the expiration of such apprenticeship, he will give to such apprentice a certificate in writing that such apprentice has served at such trade or craft the full term of apprenticeship as specified in this indenture.

The said master also agrees that the said apprentice shall be instructed in reading, writing and the general rules of arithmetic, and that, at the expiration of said term of service, the said master will give to the said A. B. a new bible.

IN WITNESS, etc. [*as in Form No. 204.*]

209. Agreement by the Father to Answer for the Fidelity of the Apprentice; to be Indorsed on the Indenture.

In consideration of the covenants and agreements to be performed by Y. Z. to and with my son, C. B., specified and contained in the within indenture, and in consideration of one dollar to me in hand paid, I do hereby bind myself to the said Y. Z. for the true and faithful performance and observance by the said C. B. of all the matters and things by him covenanted and agreed to be performed and observed in and by the said indenture [and that he shall well and truly serve the said Y. Z.].

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day of , .

[*Acknowledgment.*]

[*Signature and seal.*]

210. Certificate of Master.

I, A. B., do hereby certify that C. D. has served a full term of apprenticeship of years with me, as specified in the indenture of apprenticeship, dated , at the trade or craft of a blacksmith [or, as the case may be].

IN WITNESS WHEREOF, I have hereunto set my hand, this day of .

[*Acknowledgment.*]

A. B.

211. Assignment of Indenture of Apprenticeship on Death of Master.

THIS INDENTURE, made this day of , , between E. D., as executor of the last will and testament [or, as administrator of, etc.] of C. D., late of , deceased, and G. H., of .

WITNESSETH:

WHEREAS, by an indenture of apprenticeship duly made on the day of _____, [here describe same fully], A. B. was duly apprenticed and bound to service to said C. D., as apprentice by _____ [here describe the poor officers making such apprenticeship]; and,

WHEREAS, the said C. D. departed this life on or about the day of _____, being at the time of his death a resident of _____, in the county of _____, and leaving a last will and testament [or, intestate]; and,

WHEREAS, the said E. D. has been duly appointed as executor of said last will and testament [or, the administrator of, etc.], of said C. D., deceased; and,

WHEREAS, the parties hereto desire to assign to the said G. H. the said indenture of apprenticeship, and such assignment has been duly consented to by _____ [here describe the officers of the poor making the consent], such consent being in writing and acknowledged by said _____ [poor officers], [or, upon an order of the county judge of _____ county, of which a copy is hereunto annexed];

NOW, THEREFORE, pursuant to the statute in such case made and provided, I, the said E. D., as such executor [or, administrator], as aforesaid, in consideration of the sum of one dollar to me in hand paid by the said G. H., the receipt whereof is hereby acknowledged, have sold, assigned, transferred, set and delivered over, and by these presents do sell, assign, transfer, set, and deliver over unto said G. H., the said indenture of apprenticeship, with all the rights, duties and powers given to the said C. D. thereunder;

TO HAVE AND TO HOLD the same unto the said G. H., his executors, administrators and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year first above written.

[Signature and seal.]

212. Consent of Poor Officers to Foregoing Assignment.

I, _____ [here recite official title], of _____, do hereby consent to the foregoing assignment of the indenture of apprenticeship made by _____ as executor [or, administrator] of C. D., deceased, to G. H.

[Acknowledgment.]

[Signature.]

The consent of the apprentice does not seem to be required in this case.

II. PROCEEDINGS UPON A VIOLATION.

213. Complaint in Action Against the Employer under Section 125 of the Domestic Relations Law.

Court,
County.

| | |
|---|---|
| A. B., by Y. Z., his Guardian, v. C. D. | } |
|---|---|

The complaint of A. B., the above-named plaintiff, respectfully shows:

That the plaintiff is a minor, an infant, under the age of twenty-one years [here state the date of the entry of the order appointing guardian ad litem]; that by an indenture of apprenticeship, dated the day of _____, _____, duly

executed by plaintiff, and by [his father, or as the case may be], the said plaintiff was duly apprenticed to said defendant for the term of years from the date of said indenture, in the trade and business of a , which said C. D. was engaged in. That annexed hereto, and made a part hereof, is a copy of said indenture.

That it was covenanted and agreed in and by said indenture, on the part of the above-named defendant, among other things, that he would provide at all times during the continuance of said apprenticeship suitable and proper board, lodging and medical attendance for the said plaintiff, and would teach or cause to be carefully and skillfully taught to said plaintiff every branch of said business to which the said plaintiff was apprenticed, as aforesaid.

Plaintiff further alleges that said plaintiff entered into the service of said C. D., as his apprentice, and has faithfully performed the covenants and agreements contained in said indenture on his part to be performed, but that said defendant has not performed said covenants on his part, but has during all the term of said apprenticeship neglected and refused to teach or cause to be taught to said plaintiff the art or mystery of the trade or craft to which said plaintiff was indentured, as aforesaid, and he has failed to provide suitable and proper board, lodging and medical attendance to said plaintiff, though often requested so to do by said plaintiff.

Plaintiff further alleges that by reason of said neglect and refusal, as aforesaid, the plaintiff has sustained damages to the amount of dollars.

Wherefore, the plaintiff prays that judgment may be given against said defendant for the sum of dollars, and that the court will direct said indenture to be canceled, and will enforce a fine upon said defendant of one thousand dollars for said neglect and refusal, to be collected and paid over to said plaintiff's sole use and benefit, as provided by statute, and for such other relief as to the court may seem just.

E. F.,
Plaintiff's attorney.
[Address.]

[Verification.]

214. Order on Foregoing Complaint.

At a term of the court, held at , in the
county of , on the day of , .

Present.—

, Justice.

A. B., by Y. Z., his Guardian,

v.

C. D.

On reading and filing the complaint made in this action, whereby it appears [here state the substance of the said complaint], and C. D., the above-named defendant and employer, having duly appeared before me, and a trial having been had of the facts alleged in the said complaint, and after hearing , of counsel for plaintiff, and , of counsel for the defendant [reciting the appearances, if any], and the court being satisfied that sufficient cause therefor has been shown, it is

ORDERED, ADJUDGED and DECREED, that the said indenture of apprentice-

ship [*here describing the same*], he and the same hereby is canceled, and that the plaintiff have judgment against the defendant for the sum of dollars, and that he have execution for said sum, and that the said sum, when so collected, shall be paid over for the use and benefit of the plaintiff to [*here recite person who is to receive said moneys*].

For other forms of complaints in apprenticeship matters, see BOOKS CONTAINING FORMS FOR USE UNDER CODE OF CRIMINAL PROCEDURE.

CHAPTER VII.

ARBITRATION AND AWARD.

In general, any controversy which might be the subject of a civil action may be submitted to arbitration. If an action is already pending, the arbitration effects a discontinuance of it, unless it is otherwise stipulated by the parties. An agreement to arbitrate is usually, though not necessarily, in writing. When in writing, it is frequently in the form of mutual bonds. If not in that form, it is prudent to make two counterparts of the instrument, one for each party. It is usual to appoint one, two, or three arbitrators, and, if more than one, to provide against the contingency of their not being able to agree. This may be done by empowering them, in such case, to call in another person, chosen by themselves, to act with them; but the better practice is to empower them to choose an umpire, who shall act instead of them, if they shall fail to agree.

The agreement of submission, in whatever form it is made, should state explicitly what powers are intended to be conferred on the arbitrators or umpire, either by referring all controversies without limit, or by distinctly limiting the particular controversies intended. If it is intended that the arbitrators may require either party to pay the expenses incurred by the other in the arbitration, the agreement should expressly empower them to award payment of expenses. But without this, the arbitrators are entitled by custom to require the prevailing party to pay them the same fees which are allowed to referees in courts of record. A different rate of compensation may be fixed by agreement of those concerned.

All the arbitrators and all the parties must have reasonable notice of the time and place of the hearing. The more convenient practice is to apply to the arbitrators to appoint a time and place, and give written notice to the parties.

If several arbitrators are appointed, an award must be made unless it is otherwise provided in the submission. At common law all arbitrators must join unless agreement provides for a majority. By New York statute, majority must join, unless agreement provides for all. Code Civ. Pro., § 2371.

If it is provided that all or any two of the arbitrators may make an award, they must all have due notice to attend the meeting, and of the subject of reference, otherwise the award will not be binding.

If, after due notice, either party neglects to attend, the arbitrators may proceed *ex parte*.

In settling their award, the arbitrators must confine themselves strictly within the powers conferred by the submission. The precise controversy submitted to them should be determined; and if the award embraces matters not included in the submission, it is void, unless the portion which exceeds the submission can be separated from the rest, without affecting the merits of the award as to that which was submitted.

The matters awarded should be expressed in clear and distinct terms, so that nothing shall be left uncertain. Thus, if a party is required to give security, the nature and extent of the security must be stated, otherwise it would not appear what would amount to a performance of such requirement. In reference, however, to matters of calculation, or of definite facts, ascertainable

to a legal certainty, it is enough if the award give the data or conditions from which the result may be deduced.

The matters awarded must also be mutual, affecting both parties, possible of execution, and final, so as to terminate the controversy.

If the submission requires it, the award must be sealed as well as signed; otherwise, sealing is not necessary, even where the submission is sealed. If the submission contemplates being delivered to the parties, it should be executed in duplicate, so that each party may have an original; the power of arbitrators ceases with the delivery of an award, but not of a document which is merely an opinion.

Statutory Arbitration—In many of the states, the proceeding is regulated by statute, with provisions that the award may be brought into court and a judgment entered thereon. In New York and some other states, it is held that the statute does not take away or affect the common-law proceeding; so that in such states an arbitration may be good for the purpose of establishing a valid award on which the successful party may sue if necessary, although it does not conform to the statute, and therefore does not entitle the party to a summary judgment without suit. In other states, the statute method is exclusive, and its regulations are held to apply to all arbitrations.

The statute of New York provides that for the purpose of an award on which judgment may be entered, all persons, except infants and persons legally incapacitated, may, by an instrument in writing, submit to the decision of one or more arbitrators any controversy existing between them, which might be the subject of a suit at law or in equity; including any claim to an interest in real estate, for a term of years or less, and any controversy respecting partition between joint tenants, or tenants in common, or concerning boundaries, or the admeasurement of dower, but excluding claims to real estate, in fee or for life.

The agreement may stipulate that judgment may be entered on the award, if a proceeding under the statute is intended.

The forms under the New York Code of Civil Procedure (Code Civ. Pro., §§ 2365-2386), and the statutes of other states, appear in regular books of forms of pleadings and practice, and are not given here.

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215. General Form of Agreement of Submission.

WHEREAS, controversies exist, and for a long time have existed, between us, A. B., of , and Y. Z., of , in relation to divers subjects:*

NOW, THEREFORE, we, the undersigned A. B. and Y. Z., do hereby mutually covenant and agree, to and with each other, to submit all and all manner of actions, cause and causes of actions, suits, controversies, claims and demands whatsoever, now pending, existing, or † held by and between us, § to M. N., of , as arbitrator, who shall [or, to M. N., O. P., and Q. R., all of , as arbitrators, who, or any two of whom, shall] arbitrate, award, order, judge, and determine of and concerning the same. With power to award the payment of the costs [and of the expenses] incurred in such arbitration. And we do mutually covenant and agree to and with each other that the award to be made by the said arbitrator [or, arbitrators, or any two of them] shall, in all things, by us and each of us, and by the [*here add the word "heirs," if award may affect any interest in real property*], executors, administrators, and assigns of us and each of us, be well and faithfully kept, observed, and performed. Provided, however, that such award be made in writing, under the hand of the said arbitrator [or, hands of the said arbitrators, or any two of them], ready to be delivered to us, or either of us, on or before the day of , .

WITNESS our hands and seals, this day of , .

In presence of

[*Witness's signature.*]

A. B. [SEAL.]

Y. Z. [SEAL.]

216. Agreement for Arbitration of Partnership Affairs.

WHEREAS, a partnership was formed on the day of , , between the undersigned A. B., C. D., and E. F., which by its terms has not yet expired, but which the partners desire to terminate; And,

WHEREAS, they have been unable to agree upon the terms of dissolution, and various differences have arisen among them;

NOW, THEREFORE, in consideration of the premises, and for a settlement of all the questions between the parties connected with said partnership, the undersigned agree to submit their differences to arbitration and award of G. H., I. J., and K. L., whose decision duly made in writing and delivered to the parties on or before the day of , 18 , the undersigned severally and mutually agree to abide by and perform. The matters specially submitted to said arbitrators and upon which they are to make their award, are:

First: Upon what terms shall the said C. D. and E. F. purchase the stock and interest of said A. B., in all the partnership property of the said firm, including merchandise, furniture and fixtures, machinery at the factory, and

real estate, the purchasers assuming all the partnership liabilities, and what security upon such purchase shall be given to the said A. B.

Second: Upon what terms shall the said A. B. purchase all the stock and interest of said C. D. and E. F., in the same partnership property, he assuming all the partnership liabilities, and what security upon such purchase shall be given by him to the said C. D. and E. F.

The arbitrators shall also determine which of the parties shall have the option of purchasing according to the terms awarded, that is, whether the option shall be given to the said A. B. to purchase the interest of the said C. D. and E. F. in said property, or to the said C. D. and the said E. F., to purchase the interest of the said A. B. in the same upon the terms awarded by them; and in case the party to whom such option is awarded does not, within thirty days after the execution and delivery of the award, elect to purchase according to its terms, then the other party to these presents shall, and hereby agrees to purchase according to the terms awarded, as the terms of the purchase by them.

In determining the matters so submitted, the arbitrators are to have submitted to them the articles of partnership executed between the partners, the partnership books, and any inventory, balance sheets and other statements appertaining to the partnership business, and also such books and papers of the former firm of A. B. & Co., as may be required in the premises, and may act upon their own judgment as to the values, or may take testimony, and after hearing the statement of the parties and their counsel, they shall make their determination and award upon a full consideration of all the claims, questions, and differences of and between the parties.

IN TESTIMONY WHEREOF, etc.

[Signatures and seals.]

217. The Same, with Agreement for an Umpire.

[As in Form No. 215, to the §; continuing thus:] to M. N., O. P., and Q. R., all of _____, as arbitrators, who shall arbitrate, award, order, judge, and determine of and concerning the same. [Here insert, if desired, with power to award the payment of the costs [and of the expenses] incurred in such arbitration.] And we do mutually covenant and agree to and with each other, that the award to be made by the said arbitrators shall in all things by us and each of us, and by the executors, administrators, and assigns of us, and each of us, be well and faithfully kept, observed, and performed. Provided, however, that such award be made in writing, under the hands of the said arbitrators, ready to be delivered to us, or either of us, on or before the _____ day of _____ . And provided that, in case the said arbitrators do not so make their award on or before said day, the questions above mentioned shall be, and are hereby, submitted to the decision of such third person as shall be then, or shall theretofore have been, appointed [in writing] by said arbitrators to act in such case as umpire; and the award so made and ready to be delivered by said umpire, on or before the _____ day of _____ , shall be valid and binding upon each of us, and the [here add the word "heirs" if the award may affect any interest in real property] executors, administrators, and assigns of each of us, in like manner as if it had been made by the arbitrators above named in person.

WITNESS our hands and seals, this _____ day of _____ , _____ .

In presence of

[Witness's signature.]

A. B. [SEAL.]

Y. Z. [SEAL.]

218. Short Form of Submission.

The undersigned hereby mutually agree to submit all their matters in difference, of every name and kind, to the determination and award of M. N., of _____, as arbitrator [or, to M. N., O. P., and Q. R., all of _____, as arbitrators], the said arbitrator [or, arbitrators, or, any two of them] to hear and determine the same [and insert, if desired, and award the payment of the costs [and expenses] incurred in such arbitration], and make their award in writing, on or before the _____ day of _____, _____.

WITNESS our hands and seals, this _____ day of _____, _____.

In presence of _____ [Signatures and seals.]

[Witness's signature.]

219. Special Submission; Controversy Between Several Persons on Either Side.

[As in Form No. 215, inserting, instead of the words, "held by and between us," at the †, these words]: held jointly, by and between the said A. B. and C. D., of the one part, and the said W. X. and Y. Z., of the other part.

220. The Same; Controversy as to Wages.

WHEREAS, a controversy exists between us, A. B. and Y. Z., both of _____, in relation to the wages due to Y. Z. from A. B., for services heretofore rendered by Y. Z. to A. B., as clerk [or, as foreman, or, as journeyman, or, as laborer]. [Proceed as in Form No. 215, from the *, or if an umpire is to be appointed, follow Form No. 217.]

221. The Same; Controversy as to an Account.

WHEREAS, in respect to the account between the parties hereto, a copy of which is hereto annexed, a controversy has arisen as to whether A. B. ever delivered the flour therein mentioned, or any part thereof, to Y. Z., and if so, with what price or value Y. Z. is chargeable therefor, and as to what term of credit Y. Z. is entitled to for the payment of the balance due from him to A. B. [Proceed as in Form No. 215, from the *, or if an umpire is to be appointed, follow Form No. 217.]

222. The Same; Controversy as to Breach of Warranty.

WHEREAS, a controversy exists between us, A. B. and Y. Z., both of _____, concerning the sale, warranty, and soundness of a certain horse, which it is alleged was sold by Y. Z. to A. B. aforesaid, upon a warranty that the said horse was sound in every respect, and which horse, it is alleged, is not and was not, at the time of such sale, sound in every respect. [Etc., as in Form 220.]

223. The Same; Controversy as to Annuity in Lieu of Dower.

WHEREAS A. B., as widow of B. B., deceased, was entitled to dower in all the farm in M., sold by C. B., heir of said B. B., to one N., and which had belonged to said B. B. in his lifetime, and said A. B. had agreed with said C. B. to take a sum of money, to be secured and paid quarterly to her during her life by said Y. Z., in lieu of said dower; and,

WHEREAS, a controversy has arisen between the parties hereto, as to what quarterly sum is a fair equivalent in lieu of said dower, and what amount of security therefor, and the nature of the same, shall be given by said C. B. to said A. B. [Etc., as in Form No. 220.]

224. The Same; Controversy Concerning Land and Trespasses.

WHEREAS, a controversy exists between us, A. B. and Y. Z., both of _____, concerning the title [*or, the right to possession, or both*] to a tract of land, situate in the town of M., and county of N., and known as the Smith farm, [*or, and bounded and described as follows, giving description*], and respecting damages claimed by A. B. from Y. Z., for trespasses alleged to have been committed by him and his servants thereon. [*Etc., as in Form No. 220.*]

225. The Same; Concerning Boundaries.

WHEREAS, a controversy exists between us, A. B. and Y. Z., both of _____, concerning the boundary and division lines of certain tracts of the parties hereto, situate, in the town of M., and county of N. [*Etc., etc., as in Form 220.*]

226. Arbitration Bond.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., of the town of _____, in the county of _____, am held and firmly bound unto Y. Z., of the town of _____, in the county of _____, in the sum of _____ dollars, lawful money of the United States, to be paid to the said Y. Z., or to his executors, administrators, or assigns; for which payment, to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal; dated the _____ day of _____, _____.

The condition of this obligation is such: That if the above bounden A. B., his heirs, executors, and administrators, shall well and truly submit to the decision and award of [*here name arbitrators*] named, selected, and chosen arbitrators as well by and on the part and behalf of the said A. B., as of the said Y. Z., to arbitrate, award, order, judge, and determine, of and concerning all and all manner of actions, cause and causes of actions, suits, controversies, claims, and demands whatsoever, now depending, existing, or held, by and between the said A. B. and the said Y. Z. [*here insert, if desired, with power to award the payment of the costs [and expenses] incurred in such arbitration*]; so that the said award be made in writing, under the hands of the said [*here name arbitrators*], or any two of them, and ready to be delivered to the said parties, or such of them as shall desire the same, on or before the day of _____, _____; * then this obligation to be void, otherwise to remain in full force.

In presence of,

A. B. [SEAL.]

[*Acknowledgment.*]

227. The Same, where the Appointment of an Umpire is Contemplated.

[*As in preceding form, inserting the following at the * before the words, " then this obligation," at the end.*]

And if the said arbitrators shall not make such their award, of and concerning the premises, within the time limited as aforesaid, then, if the said A. B., his heirs, executors, and administrators, and every of them, for his and their part and behalf, do and shall well and truly perform and keep the award and umpirage of R. S. [*being a person indifferently chosen between the said parties for umpire*], in and concerning the premises, so as the said umpire do make and set down his award and umpirage in writing under his hand and seal, ready to be delivered to the said parties in difference, on or before the day of _____, _____, then [*etc.*].

228. Agreement or Bond, where the Arbitrators are to be Sworn.

[*Insert in either form of agreement or bond, the following:*] But before proceeding to take any testimony therein, the said arbitrators shall be sworn "faithfully and fairly to hear and examine the said matters in controversy, and to make a just award according to the best of their understanding."

229. Submission Without Discontinuing a Pending Suit.

[*Insert in either form of agreement or bond, the following:*] But it is hereby agreed that this submission shall not operate as a discontinuance of a suit now pending, to which the said A. B. and Y. Z. are parties, without an award made pursuant to the terms hereof; and that its effect as to such suit shall be merely to stay proceedings until such discontinuance, or until the submission shall become inoperative or be revoked.

230. Notice to the Arbitrators of Their Appointment.¹

GENTLEMEN.— You are hereby notified that you have been chosen arbitrators on the part and behalf of each of the undersigned, to arbitrate, award, adjudge, and determine as to certain matters of difference specified in the submission of the undersigned, which will be produced before you [*or, to determine a controversy existing between us concerning, here stating the matter as in the agreement or bond*], and to make your award on or before the day of _____; and you are requested to meet the undersigned at the house of J. K., in the town of _____, aforesaid, on the day of _____, at _____ o'clock in the _____ noon of that day, for the purpose of fixing upon a time and place for hearing the proofs and allegations of the said parties.

[*Date.*]

Yours, etc.,

A. B.

Y. Z.

To M. N., O. P., and Q. R.

231. Notice of Hearing, for the Adverse Party.

STATE OF _____,
County of _____,

In the Matter of the Arbitration
between A. B. and Y. Z.

SIR.— Please take notice, that a hearing in the matter of the arbitration concerning certain differences between A. B. and Y. Z., will be had before the arbitrators, at the office of M. N., No. _____, street, in the city of _____, at _____ o'clock in the _____ noon, on the day of _____, 19 _____.

[*Date.*]

[*Signature.*]

[*Address.*]

232. Oath of Witness.

You do swear that the evidence you shall give to the arbitrators here present, in a certain issue joined [*or, on certain matters of difference*] between A. B. and Y. Z., shall be the truth, the whole truth, and nothing but the truth; so help you God.

¹Written notice is not important, but this form is the most convenient way of proceeding in most cases.

233. Agreement to Extend the Time for Making the Award.

It is hereby mutually agreed between the parties to the within [*or*, annexed] submission, that the time for making ready the award be and hereby is extended to the day of , .
 Dated this day of , . [*Signatures.*]

REVOCATION OF ARBITRATOR'S POWERS.

NOTE.—The effect of a revocation is to terminate the arbitration and to remit the parties to their rights, as they stood before entering into the agreement of arbitration. If the submission was under seal, the instrument revoking it should likewise be under seal. At common law a submission may be revoked at any time before final submission to arbitrators for decision, notwithstanding contrary provisions contained in the agreement to arbitrate.

234. General Form of Revocation.

STATE OF ,

County of ,

| |
|----------------------------------|
| In the Matter of the Arbitration |
|----------------------------------|

| |
|-------------------------|
| between A. B. and Y. Z. |
|-------------------------|

To M. N., O. P., and Q. R., arbitrators, etc.:

GENTLEMEN.—Please take notice, that I hereby revoke your powers as arbitrators under the submission made to you by Y. Z. and myself, in writing, and dated on the day of , .
 [*Date.*]

Yours, etc.,
 [*Signature and seal.*]

235. Notice of Revocation to Adverse Party.

STATE OF ,

County of ,

| |
|----------------------------------|
| In the Matter of the Arbitration |
|----------------------------------|

| |
|-------------------------|
| between A. B. and Y. Z. |
|-------------------------|

SIR.—Please take notice, that I have this day revoked the powers of M. N., O. P., and Q. R., arbitrators chosen to settle the matters in controversy between us, by an instrument of which the following is a copy.

[*Date.*]

To Y. Z.

Yours, etc.,

[*Signature.*]**236. Appointment of Umpire, After Disagreement of Arbitrators.**

TO ALL TO WHOM THESE PRESENTS SHALL COME, We, M. N., O. P., and Q. R. of , send greeting:

WHEREAS, by an agreement [*or*, bonds], bearing date the day of , differences were referred by A. B. and Y. Z. to our consideration, to hear, determine, and award upon the same, " and we are not able to determine such differences; we have, therefore, selected and made choice of, and by these presents do appoint, S. T., of , for umpire, to arbitrate, award, order, judge, and determine the said differences between the said A. B. and Y. Z., pursuant to said agreement [*or*, bonds].

WITNESS our hands, this day of , .

[*Signatures.*]

237. The Same, Before the Hearing.

[As in preceding form to the , continuing thus:] we, therefore, have selected and made choice of, and by these presents do appoint, S. T., of , for umpire, to arbitrate, award, order, judge, and determine the said differences between the said A. B. and Y. Z., pursuant to said agreement [or, bonds], in case we do not agree upon and make an award on or before the day of ,

WITNESS our hands, this day of , [Signatures.]

238. Award by Arbitrators.

[Title.]

WHEREAS, matters in controversy between A. B. and Y. Z., of , were by them submitted to the undersigned, M. N., as arbitrator [or, M. N., O. P., and Q. R., as arbitrators], as by their submission in writing [or, by the condition of their respective bonds of submission, executed by the said parties, respectively, each to the other], and bearing date the day of , more fully appears. NOW, THEREFORE, we, the arbitrators mentioned in the said submission [or, bonds], * having [been first duly sworn according to law, and having] heard the proofs and allegations of the parties [or, of A. B., the said Y. Z. not appearing after due notice to him], and having examined the matters in controversy by them submitted, do make this award in writing [or, in writing and under seal] — that is to say † [here state the things awarded to be done — see following forms].

IN WITNESS WHEREOF, I [or, we] have subscribed these presents, this day of , one thousand nine hundred and

[Signatures, and seals also, if required by the submission.]

In the presence of
[Witness's signature.]

239. Award by Arbitrators, Short Form.

| | |
|--|---|
| In the Matter of the Arbitration of A. B. and Y. Z. | } |
|--|---|

We, C. E. and F. G., having been duly appointed arbitrators in the matter in controversy existing between said A. B. and Y. Z., as by the provisions of their submission in writing [or, the condition of their mutual bonds], executed by the said parties, respectively, and sealed with their respective seals, dated the day of , will more fully appear, and after having taken the oath prescribed by statute, and having heard the proofs and allegations of the said parties, and due deliberation having been had, do hereby award, determine, and order [or, do make this award in writing; that is to say — here insert decision of the arbitrators.]

IN WITNESS WHEREOF, we have subscribed these presents, this day of [Signatures of arbitrators.]

[Acknowledgment.]

240. Award by Umpire.

WHEREAS, matters in controversy between A. B. and Y. Z. were by them submitted to M. N., O. P., and Q. R., as arbitrators, as by their submission in writing [or, by the condition of their respective bonds of submission executed by the parties to each other], bearing date the day of , more

fully appears, whereby it was provided that in case said arbitrators should not make their award on or before the day of , , the said questions should be and were submitted to the decision of such third person as should be then, or should theretofore, have been appointed [in writing, or, in writing and under seal] by said arbitrators to act in such case as umpire, the award by such umpire to be made and ready to be delivered on or before the day of , ; and,

WHEREAS, the said M. N., O. P., and Q. R. met upon the said arbitration, and did not make their award between the said parties by the time limited in and by said submission [or, by the condition of the said bonds], and, in pursuance of the said submission [or, bonds], have chosen me as umpire [by appointment in writing, hereto annexed], to settle and determine the matters in difference between the said parties.

NOW, THEREFORE, I, the said umpire, having been first duly sworn according to law, and having heard the proofs and allegations of the parties [or, of A. B., the said Y. Z. not appearing after due notice to him], and having examined the matters in controversy by them submitted therein, do, therefore, make this award in writing [or, in writing and under seal] — that is to say, † [here state the things awarded to be done — see following forms].

IN WITNESS WHEREOF, I have subscribed these presents, this day of

[Signature, and seal also, if required by the submission.]

In the presence of

[Witness's signature.]

241. Award for Payment of Money in Full.

[As in Form 238 or 240, inserting at the † the following:] The said Y. Z. shall pay, or cause to be paid, to the said A. B., the sum of dollars, at , within days from the date hereof, in full payment, discharge, and satisfaction of and for all moneys, debts, and demands and claims whatever [referred to in the submission] due or owing from him, the said Y. Z., to the said A. B., at any time before the date of said submission.

242. Award for Damages for Breach of Warranty.

[As in Form 238 or 240, inserting at the †:] That the said A. B. did sell to the said Y. Z. a certain horse on the day of last, warranting him to be sound in every respect, for the price of one hundred and fifty dollars. The said horse is, and was at the time of such sale, unsound, and worth only the sum of forty dollars; and the said A. B. should pay to the said Y. Z. one hundred and ten dollars for the difference in price, and thirty dollars for the expenses of keeping him, besides the costs of this arbitration.

243. Award for Delivery of Goods.

[As in Form 238 or 240, inserting at the †:] That the said Y. Z. shall freely deliver up to the said A. B., on request by him to be made, one trundle-bed, and three pair of sheets thereto belonging, one mahogany table, one dozen chairs, and one silver tea set, all of which were the goods of the late M. N., deceased.

244. Award for Delivery of Writings.

[As in Form 238 or 240, inserting at the †:] That the said A. B. shall freely deliver up to the said Y. Z., on or before the day of next ensuing the

date hereof, at his dwelling-house in aforesaid, all leases, deeds, and writings whatsoever concerning the estate of the said Y. Z., now in the hands and possession of the said A. B., or of any other person in trust for him, especially the leases of the dwelling-house [etc., describing the particular papers].

245. Award for Delivering of Writings to be Canceled.

[As in Form 238 or 240, inserting at the †:] That the said A. B. shall deliver up unto the said Y. Z. a certain indenture of mortgage made by , to , and dated on the day of , canceled, or to be canceled.

246. Award for Giving a Bond for Payment of Money.

[As in Form 238 or 240, inserting at the †:] That the said A. B., within days after notice of this award, shall well and sufficiently make, seal, and deliver to the said Y. Z. a bond or obligation in the penal sum of dollars, conditioned for the payment of dollars to the said Y. Z., his executors, administrators, and assigns, on or before the day of , with interest at per cent. per annum, payable semi-annually from this date.

247. Award for Assignment of a Mortgage.

[As in Form 238 or 240, inserting at the †:] That the said Y. Z. shall make, execute, and deliver to the said A. B., on or before the day of instant, a good and sufficient assignment of a certain bond and mortgage, executed by one I. J. to said Y. Z., etc.; and the said A. B. shall pay, or cause to be paid, to the said Y. Z., the sum of dollars, immediately upon the execution and delivery of the said assignment.

248. Award for Specific Performance of Agreement to Assign a Lease.

[As in Form 238 or 240, inserting at the †:] That the said A. B., or his heirs, shall and do, on or before the day of next ensuing the date hereof, make and execute to said Y. Z. a good and sufficient conveyance of his interest as lessee for years of a certain farm in the possession of the said A. B., situate at , according to the true intent and meaning of certain articles of agreement, bearing date on or about the day of , and made between the said A. B. of the one part, and the said Y. Z. of the other part, or as near the same as the present circumstances will admit.

249. Award for Specific Performance of Contract to Convey Land.

[As in Form 238 or 240, inserting at the †:] That A. B. shall, on or before the day of next, by such deed or deeds as the said named Y. Z., his heirs or assigns, or his or their counsel, shall advise, well and sufficiently grant, convey, and assure unto the said Y. Z., his heirs and assigns, forever, a certain piece of ground, situated in , and known and described as follows [describing it]. And that upon the execution of the said conveyance, the said Y. Z. shall pay, or cause to be paid, unto the said A. B. the sum of dollars, and shall also give security by bond and a mortgage of the premises (if required) for the payment of the sum of dollars, in manner following — to-wit, etc.

250. Provision for the Discontinuance of all Suits.

[Insert in previous forms:] And we do further award, that all actions and suits commenced, brought, or depending between the said A. B. and Y. Z., for

any matter, cause, or thing whatsoever, arising or happening at the time of, or before their entering into the said submission [or, bonds of arbitration], shall, from henceforth, cease and determine, and be no further prosecuted or proceeded in by them, or either of them, or by their, or either of their means, consent, or procurement.

251. Provision for the Discontinuance of Suit, with Costs.

[*Insert in preceding forms:*] And we do further award, that the said Y. Z. shall forthwith cease to prosecute, and shall discontinue a certain suit commenced by him, against the said A. B., in the court of county, now pending and undetermined in said court; and the said A. B. shall pay, or cause to be paid, to the said Y. Z., on or before the day of , the sum of dollars, in full satisfaction of the costs, charges, and expenses incurred by the said Y. Z., in and about the prosecution of his suit as aforesaid.

252. Provision for General Releases.

[*Insert in either of preceding forms:*] And we do further award that the said A. B. and Y. Z. shall, within days next ensuing the date hereof, execute unto each other, under seal, mutual and general releases of all actions, cause and causes of actions, suits, controversies, claims, and demands whatsoever, for or by reason of any matter, cause, or thing, from the beginning of the world down to the date of the said submission [or, said bonds].

253. Provision for Costs of the Arbitration.

[*Insert in preceding forms:*] And we do further award, that the sum of dollars, being the expenses and charges incident to this arbitration, shall be paid by the said A. B. [or, by them, the said A. B. and Y. Z., in equal shares].

CHAPTER VIII.

ASSIGNMENTS.

AN assignment, in the broadest sense in which the term is used in conveying, may be any transfer of any property; but in respect to lands and chattels it is generally employed to designate a transfer of some partial or qualified interest only; or it signifies, often, a transfer of a right in action.

As between the parties, it is necessary to the validity of an assignment, that the assignor should express his intent to transfer the title to the property; and, in the cases in which a writing is required by the Statute of Frauds, that this intention should be expressed in writing. A consideration for the assignment is only necessary in order to sustain it against creditors, or other third parties.

The usual technical words of an assignment are "sell, assign, transfer, and set over," or, "sell, assign, transfer, and set and deliver over." But any language which expresses the intent to transfer the property is sufficient.

In cases in which, by the Statute of Frauds, a writing is necessary to a valid assignment, the essential parts of the instrument must be reduced to writing before the signature and delivery. If the assignor signs and delivers a blank paper on an agreement that a third person may write a certain assignment thereon, this will not constitute a valid transfer of an interest which can only be transferred by deed or note in writing—*e. g.* a lease—although the blank is subsequently filled as agreed. Otherwise, when the interest to be transferred is not one of those which can only be transferred by writing.

In general, the assignee of a right in action acquires no better title than his assignor possessed. He holds the demand subject to any equities which might have been enforced against his assignor.

Every instrument of assignment ought to be acknowledged by the assignor.

Formerly, the assignee was not permitted to sue the demand in his own name, but could only proceed to enforce it in the name of his assignor; but in New York and most other states, he is enabled, by recent statutes, to sue in his own name. See also chapter on ACKNOWLEDGMENTS, etc.

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254. Short form¹ of Assignment, Suitable to be Indorsed on a Written Instrument.

For value received, I hereby assign unto Y. Z. the within bond [*or*, contract, *or*, policy of insurance, *etc.*].

[*Date.*]

[*Signature.*]

¹This form is only sufficient in cases where a bare transfer of the subject assigned answers the intention of the parties. If any guaranty is intended, or any power of attorney can become necessary to enable the assignee to enforce

his right, or anything beyond a mere transfer of the instrument can in any event become requisite, the appropriate special clause should be added to the above.

edged¹], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto Y. Z., of _____, his executors, administrators, and assigns, to his and their own proper use and benefit [all my right, title, and interest in and to], * any and all sum or sums of money now due, or to grow due, upon the annexed account, or upon the sales [or, services, or, loans, or *whatever transactions may be the basis of the account*] therein mentioned. And I do hereby give the said Y. Z., his executors, administrators, and assigns, the full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound, and give acquittance for the same, or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____,

In presence of _____ [Signature and seal.]
 [Signature of witness or witnesses.]

259. Assignment of a Bail Bond.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., the sheriff within named, do assign and set over to Y. Z., the plaintiff therein named, at his request, the within bail bond, or obligation, pursuant to the statute in such case made and provided.

IN WITNESS, etc. _____ A. B., Sheriff. [SEAL.]

260. Assignment of a Bond, with Covenant of Amount Due, and Power to Sue.

[As in Form 258 to the *, and then as follows:] a certain written bond or obligation, and the condition thereof, bearing date the _____ day of _____, executed by M. N. to me, the said A. B., and all sum and sums of money due or to grow due thereon. And I do hereby covenant with the said Y. Z., his executors, administrators, and assigns, that I have good right to assign the said bond, and that there is now due thereon, according to the condition thereof, for principal and interest, the sum of _____ dollars; and I hereby give the said Y. Z., his executors, administrators, and assigns, the full power and authority in my name or otherwise, but at his or their own cost, and for his or their own use and benefit, to ask, demand, sue for, collect, receive, compound, cancel, discharge, and give acquittance for, the same, or any part thereof.

IN WITNESS, etc.

261. Another Form, with Covenants, Guaranty, and Power to Sue.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, M. N., of _____, in and by a certain bond or obligation, bearing date the _____ day of _____, 18 _____,

¹ Omit the words in brackets, where the conveyance of property, may be explained consideration is not intended to be paid at the away for the purpose of recovering the time of delivery. They would not form an money, though it cannot be for the purpose absolute bar to an action for the recovery of avoiding the conveyance. This at least is the agreed price, if not paid at the agreed the rule indicated by the majority of the time; for the rule that an acknowledgment cases, though there is much conflict of authority on the subject. But the clause in anything being received (as to which, see brackets would throw a heavy burden of Rountree v. Jacob, 2 Taunt. 141), only applies proof upon the assignor in his action for the receipts distinct and independent. A col- price, if unpaid at the delivery, and seriously lateral acknowledgment of receipt, in an in- embarrass his recovery. strument which has for its main object the

became bound to me, A. B., of _____, in the penal sum of _____ dollars, conditioned for the payment of _____ dollars and interest, at a day since past, as by the said bond and condition thereof may appear; and,

WHEREAS, there now remains due to me, for principal and interest on the said bond, the sum of _____ dollars:

NOW, I, the said A. B., in consideration of _____ dollars, lawful money of the United States [to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto Y. Z., of _____, his executors, administrators, and assigns, to his and their own proper use and benefit, the said bond or obligation, and the condition thereof, and all sum or sums of money due or to grow due thereon.

AND I, the said A. B., for myself, my executors, administrators, and assigns, do covenant and agree to and with the said Y. Z., his executors, administrators, and assigns, that I have not received, and will not receive, payment of any of the sums secured to be paid by said bond [*or, if part payment has been received, say:* have not received payment of any of the sums secured to be paid by said bond, except the sum of _____ dollars, and that I will not receive any further payment of said sums], and will not release, cancel, or discharge said bond, or do any other act or thing to hinder the said Y. Z. from enforcing the same, and that there is now due on said bond, according to the condition thereof, for principal and interest, the sum of _____ dollars [*or, according to the condition thereof, the sum of _____ dollars, with interest thereon from the day of _____,]*.

AND I further guarantee the payment [*or, collection*] of the said sum.

AND I further constitute and appoint the said Y. Z., his executors, administrators, or assigns, my true and lawful attorney and attorneys, irrevocable, with full power of substitution and revocation, for me and in my name, and in the name and names of my executors and administrators, or otherwise— but for the sole use and benefit of the said Y. Z., his executors, administrators, and assigns— to ask, require, demand, and receive of the said M. N., his heirs, executors, and administrators, the money due or to grow due on the said bond; and on nonpayment thereof, to sue for, recover, and receive the same, and on payment thereof, to deliver up and cancel the said bond, and give sufficient releases and discharges thereof.

IN WITNESS, etc.

262. Assignment of Claim for Damages.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, in consideration of the sum of one dollar, lawful money of the United States, and of other good, valuable, and sufficient considerations, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, set, and delivered over, and by these presents do sell, assign, transfer, set, and deliver over unto _____, his executors, administrators, and assigns, to his and their own proper use, benefit, and behoof forever, any and all sum or sums of money now due or owing to me, and all claims, demands, and cause or causes of action of whatsoever kind and nature, which I have had, or now have, or may have against A. B., A. C., the firm of A. B. & Co., the _____ Company, a corporation, or any other person or persons, and each and either of them, whether jointly or severally, arising out of the purchase by me, or on my behalf, of any of the shares of the capital stock of the Mining Company, a corporation created and existing under and by virtue of

the laws of the state of _____, or for any assessment or assessments paid upon the stock of the said company by me, or on my behalf, or for any other loss, injury, or damage by me sustained, or cause or causes of action arising, growing out of, or relating to or connected with any shares of the said capital stock, or any transaction or dealing therein, wherein I was interested.

And I hereby constitute and appoint the said _____, his executors, administrators, and assigns, my true and lawful attorney and attorneys, irrevocable, with full power of substitution and revocation, for me and in my name, or otherwise, but for the sole use and benefit of the said _____, his executors, administrators, and assigns, to ask, demand, sue for, collect, receive, compound, and give acquittances for the said claim or claims, or any part thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____

In presence of _____

(Signature and seal.)

[Acknowledgment.]

263. Assignment of Chattels, by Reference to Former Bill of Sale.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, M. N., of _____, by his bill of sale, under his hand and seal, hearing date, etc., which is annexed to this assignment, did, for the consideration therein expressed, bargain, sell, and deliver unto me, A. B., of _____, all and every his, the said M. N.'s, household furniture, goods, utensils, and implements, remaining and being in and about his dwelling-house therein mentioned, and which are in the schedule annexed to the same bill of sale more particularly mentioned and expressed, and all his right, title, and interest in and to the same, to have and to hold the same to me, the said A. B., my executors, administrators, and assigns forever, as by the said bill of sale and schedule annexed will appear; which said chattels are now in the building known as _____.

Now, I, the said A. B., in consideration of the sum of _____ dollars, lawful money of the United States [to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], do bargain, sell, assign, transfer, and set over unto Y. Z., of _____, all and every the household furniture, goods, utensils, and implements in the above-recited bill of sale, and schedule thereto annexed, mentioned, and thereby bargained and sold as aforesaid, to have and hold the said bargained premises unto the said Y. Z., his executors, administrators, and assigns forever.

IN WITNESS, etc.

264. Assignment of a Book, to be Copyrighted.

[As in Form 258 to the *, continuing thus:] the manuscript of a certain book, of which I am author and proprietor, entitled [give title of book in full], with all my literary property, right, title, and interest in and to said book, and all the profit, benefit, and advantage that shall or may arise from printing, publishing, and vending the same.

And I do hereby give the said Y. Z., his executors, administrators, and assigns the full power and authority, in my name or otherwise, but at his or their own cost, to enter the said book for copyright, or to apply for and receive the renewal or extension of said copyright, as allowed by the laws of the United States

265. Assignment of a Copyright.

[As in Form 258 to the *, continuing thus:] the copyright heretofore taken out by me for the book entitled [give title of book in full], of which I am

[author and] proprietor, the certificate of which copyright is annexed to this assignment [*annex the certificate*],¹ with all my literary property, right, title, and interest in and to said book, and all the profit, benefit, and advantage that shall or may arise from printing, publishing, and vending the same [within the United States of America], to hold and enjoy the same during the full end and term for which the said copyright has been issued, or any renewal or extension thereof, hereby authorizing said Y. Z. to apply for and receive the renewal and extension of said copyright.

IN WITNESS, etc.

[*Signature and seal.*]

[*Signatures of two witnesses.*]

266. Assignment of a Contract for the Sale of Real Property.

[*As in Form 258 to the *, continuing thus:*] a contract for the sale of certain real estate, being [*here give description of the property*], which contract was made and executed by M. N., of, etc., to me, and bears date the day of , , to have and to hold the same unto the said Y. Z., his heirs, executors, administrators, and assigns, for his and their use and benefit forever; subject, nevertheless, to the covenants and conditions therein mentioned.

And I hereby authorize and empower the said Y. Z., upon his performance of the said covenants and conditions, to demand and receive of the said M. N., the deed covenanted to be given in the said contract, in the same manner to all intents and purposes as I myself might, or could do, were these presents not executed.

267. The Same; Adapted to a Special Case.

KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, I, A. B., of , heretofore made and entered into a certain agreement in writing with M. N., of , bearing date the day of , whereby it was, among other things, [covenanted and] agreed between me and the said M. N., as follows, viz., that said M. N. should sell and convey to me all those eight lots of ground situate, lying, and being in the ward of the city of , shown on the annexed diagram, and numbered from one to eight thereon, both inclusive; that I should erect and completely finish eight dwelling-houses upon said lots of ground; that to aid in the erection of said houses, the said M. N. should loan and advance the sum of dollars upon each of the same, and that when said houses should be completely finished as aforesaid, said M. N. should convey the same, together with said lots, to me; that to entitle me to receive such conveyance, all mechanics' liens should be paid, and I should execute and deliver to him eight bonds, secured by eight mortgages, one upon each of said eight lots of ground, each of which should be for the sum of dollars, as by reference thereto will more fully appear [*or, a copy of which said agreement is, for greater certainty, hereto attached*]; and,

WHEREAS, I have sold unto Y. Z., of , the lot of ground, with the building thereon, known and distinguished on said diagram as and by the number two.

Now, I, the said A. B., in consideration of the sum of dollars, lawful money of the United States, to me in hand paid [*before the sealing and de-*

¹ If the original is not obtainable, it is advisable, to secure accuracy, though not essential to legal validity, that a duplicate be procured.

livery of these presents, the receipt whereof is hereby acknowledged], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said Y. Z., all that part or portion of said agreement relating to the said lot of ground numbered two on said diagram, to have and to hold the same unto the said Y. Z., his heirs, executors, administrators, and assigns, for his and their use, benefit, and behoof forever; subject, nevertheless, to the covenants and conditions in said agreement contained. And I hereby fully authorize and empower the said Y. Z., upon performance of said covenants and conditions, to demand and receive of the said M. N., the deed covenanted to be given in the said agreement, in the same manner, to all intents and purposes, as I myself might or could do, were these presents not executed.

AND I do hereby covenant and agree to completely finish, at my own expense, the house now erected upon said lot, pursuant to said agreement, and so that the same shall be in complete tenantable order and condition on or before the day of ,

AND I do further covenant and agree to pay off, and discharge of record, all mechanics' liens in any way affecting the title of said premises.

IN WITNESS, etc.

268. Consent to the Preceding Assignment.

I, M. N., in the foregoing instrument named, do hereby consent to the assignment of that part of my agreement with A. B., of , also therein named, which relates to lot numbered two on the diagram therein mentioned, and I agree to make and execute a conveyance of the same to the said Y. Z., upon the performance of the said agreement.

IN WITNESS, etc.

269. Assignment of a Debt.

[As in Form 258 to the * , continuing thus:] a certain debt now due and owing to me by M. N., of , amounting to the sum of dollars, for money loaned by me to the said M. N., on the day of , , at , [or otherwise designate the origin of the debt], together with the interest due or to grow due thereon.

AND I do hereby give the said Y. Z., his executors, administrators, and assigns, the full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound, and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

AND I do hereby covenant and agree to and with the said Y. Z., his executors, administrators, and assigns, that the said sum of dollars is justly owing and due to me from the said M. N., and that I have not done and will not do anything to lessen or discharge the said debt, or to hinder the said Y. Z., or his executors, administrators, or assigns, from collecting the same.

AND I further covenant and agree as aforesaid, that I, my executors and administrators, shall and will at all times hereafter, at the request of the said Y. Z., his executors, administrators, or assigns, but at his or their charge, make, do, and execute all such further and other acts and deeds as shall be reasonably required for the proving of the said debt, and the more effectually enabling him or them to recover the same according to the true intent and meaning of these presents.

IN WITNESS, etc.

270. Assignment of Ground Rent.

[As in Form 258 to the *, continuing thus:] all that yearly rent, charge, or sum of dollars, lawful money of the United States of America, chargeable half-yearly, issuing and payable by M. N., his heirs and assigns, on the first day of the months of January and July, in each and every year, forever, without any deduction for taxes, out of and for all that certain lot or piece of ground situate, etc. [*here describe the premises and recite former titles and the record thereof*], together with all the ways, means, rights and privileges, remedies, power of entry, [distress], and re-entry for recovering payments of the aforesaid yearly rent, charge, and the arrearages thereof, and the reversions and remainders thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said A. B., and Jane, his wife, as well at law as in equity, of, in, to, and out of the same, and of, in, and to the aforesaid lot or piece of ground out of which the said yearly rent or charge is issuing and payable, to have and to hold, receive and take the aforesaid yearly rent, charge, or sum of dollars, hereditaments, and premises hereby granted or mentioned, or intended so to be, with appurtenances, unto the said Y. Z., his heirs and assigns, to and for the only proper use, benefit, and behoof of the said Y. Z., his heirs and assigns, forever. And the said A. B., for himself, his heirs, executors, and administrators, doth, by these presents, covenant, grant, and agree, to and with the said Y. Z., his heirs and assigns, that the said A. B. and his heirs, all and singular, the hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said Y. Z., his heirs and assigns, against him, the said A. B. and his heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from, or under him, them, or any of them, shall and will, well and truly warrant and by these presents forever defend.

IN WITNESS, etc.

271. Assignment of a Judgment.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, I, A. B., of , did, on the day of , , recover judgment in the court, against M. N., of , for the sum of dollars, as by the record thereof will more fully appear.

Now, I, the said A. B., in consideration of dollars [to me paid at or before the sealing and delivery of these presents], the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto Y. Z., of , the said judgment, and any and all sum or sums of money, or other benefit or advantage that may be had or obtained by reason of said judgment.

AND I do hereby make, constitute, and appoint the said Y. Z., his executors, administrators, and assigns, to be my true and lawful attorney and attorneys, irrevocable, for me and in my name, and in the name and names of my executors and administrators, but for the sole and proper use and benefit of the said Y. Z., his executors, administrators, and assigns, and at their own costs and charges, to ask, demand, and by all lawful ways and means recover and receive, of the said M. N., his heirs, executors, administrators, and assigns, all money due or to become due on the said judgment, and sue out executions upon the said judgment, or prosecute any legal proceeding upon said judgment, which I might do for recovery thereof; and on payment or collection

of the same, to acknowledge satisfaction, or give other good and sufficient releases and discharges of the said judgment; and other attorneys, one or more under him for the purpose aforesaid, to make and substitute, and at pleasure to revoke. And whatsoever the said Y. Z., his attorney or substitute, shall lawfully do in the premises, I do hereby allow and confirm.

AND I do hereby covenant, to and with the said Y. Z., his executors, administrators, and assigns, that there is now due and owing to me, from the said M. N., the sum of dollars, with interest thereon from the day of , , and that I have not received, and will not receive, any part of said sum or interest [except, *etc.*], and have not done and will not do anything to hinder the said Y. Z. from enforcing the said judgment.

IN WITNESS, *etc.*

NOTE.—According to N. Y. Code Civ. Pro., § 1262, an assignment of judgment must be acknowledged by the assignor. A notice of assignment is also to be filed in the clerk's office. Code Civ. Pro., § 1263.

272. The Same; Another Form.

Court,
County.

| | | | |
|------------------------------|---|--------------|----------|
| A. B. v. Y. Z. | } | Damages..... | \$538 14 |
| | | Costs..... | 18 25 |
| | | | \$556 39 |

Judgment-roll filed in the office of the clerk of , June 10, .

In consideration of dollars to me paid, I hereby sell, assign, and transfer to Y. Z., the judgment above mentioned, for his use and benefit, hereby authorizing him to collect and enforce payment thereof in my name, or otherwise, but at his own cost and charges, and covenanting that the sum of dollars, with interest from the day of , , is due thereon.

IN WITNESS, *etc.* [Signature and seal.]
[Acknowledgment.]

273. The Same; to be Indorsed on Transcript.

In consideration of dollars, I hereby sell, assign, and transfer to Y. Z. the judgment mentioned in the within transcript; and I do constitute him my attorney, in my name or otherwise, but at his own costs and charges, and for his own benefit, to sue out any process or prosecute any proceedings which may be proper or necessary to enforce the same.

[Add covenant of amount due, *etc.*, as in Form No. 271, if desired.]

274. Assignment of a Lease.

[As in Form 258 to the , continuing thus:] a certain indenture of lease, bearing date the day of , in the year one thousand nine hundred and , made by M. N., of , to me the said A. B., of a certain dwelling-house and lot, situate in , with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances; to have and to hold the same unto the said Y. Z., his heirs, executors, administrators, and assigns, from the day of next, for and during all the rest, residue, and remainder of the term of years mentioned in the said indenture of lease; subject, nevertheless, to the rents,

covenants, conditions, and provisions therein also mentioned. And I do hereby covenant and agree to and with the said Y. Z. that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

IN WITNESS, etc.

275. Assignment of a Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, M. N., of _____, on the day of _____, by his deed of mortgage of that date, for the consideration of _____, did grant, bargain, sell, and convey unto me, A. B., of _____, my heirs and assigns, all and singular [*here describe the mortgaged premises*], to have and to hold the same to me the said A. B., my heirs and assigns, forever, upon condition [*here recite the conditions of the mortgage*].

NOW, THEREFORE, I, the said A. B., in consideration of the sum of _____, to me in hand paid before the ensealing hereof, do by these presents sell, assign, transfer, and set over unto Y. Z., of _____, his heirs and assigns, forever, the said [*premises*], to have and to hold the same to him, the said Y. Z., his heirs and assigns, forever, as fully and in as ample a manner as I, the said A. B., my heirs or assigns, might hold and enjoy the same by virtue of the mortgage deed aforesaid, and not otherwise.

AND I do, for myself, my heirs, executors, and administrators, hereby authorize and empower the said Y. Z., his heirs, executors, and administrators, to receive to his and their own use the sum or sums mentioned in the condition of said mortgage, whenever the same shall be tendered or paid to him or them, by the said M. N., his heirs, executors, or administrators, agreeably thereto, and to discharge the said mortgage, or to take and pursue such other steps and means for recovery of the said sum or sums, with the interest, by sale of the said mortgaged premises or otherwise, as by law are provided, as fully to all intents and purposes as I, the said A. B., my heirs, executors, or administrators, might or could do.

AND I do, for myself, my heirs, executors, and administrators, covenant with the said Y. Z., his heirs and assigns, that I have good right to assign the said premises as aforesaid; and that he, the said Y. Z., shall, and may have, hold, occupy, possess, and enjoy the same [subject, however, to the right of redemption, as by law in such cases is provided], against the lawful claim of all persons.

[*Insert also, if desired, covenant as to amount due, from Form No. 271.*]

IN WITNESS, etc.

276. Assignment of a Mortgage, with the Bond or Note.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in consideration of the sum of _____ dollars, lawful money of the United States [to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto Y. Z., of _____, a certain indenture of mortgage, bearing date the _____ day of _____, made by M. N., of _____, to secure the payment of _____ dollars, payable in _____ years from the date thereof, with interest semi-annually, at the rate of _____ per cent. [which mortgage was recorded. etc.], together with the bond or obligation therein described [*or, with the notes secured thereby*], and the money due and to grow due thereon, with the interest:

TO HAVE AND TO HOLD the same unto the said Y. Z., his executors, administrators, and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned; and I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as I might or could do, if these presents were not made. *

[Insert also, if desired, covenant as to amount due, from Form No. 271.]

IN WITNESS, etc.

See also chapter on MORTGAGES.

277. Assignment of a Mortgage with the Bond or Note as Collateral Security for a Debt.

[As in last form to the *, continuing thus:] This indenture is made upon the express condition that if the said A. B., his personal representatives or assigns, shall well and truly pay, or cause to be paid, unto the said Y. Z., his personal representatives or assigns, the sum of dollars, on or before the day of , with interest from the date of this agreement, then this agreement shall be null and void, and of no effect; this agreement being given for the purpose of securing the payment of such sum of dollars, with interest as aforesaid, and for no other purpose whatsoever.

In case the said Y. Z., his personal representatives or assigns, shall collect and receive the money due on the said bond and mortgage [or, note and mortgage], hereby assigned, he shall, after retaining the said sum of dollars, with interest as aforesaid, and his reasonable costs and charges in that behalf, pay the surplus, if any, to the said A. B., his personal representatives or assigns.

278. Assignment of Partnership Property by One Partner to Another, to Close the Concern.

WHEREAS, a copartnership has heretofore existed between A. B. and Y. Z., both of , under the firm name of B. & Z., which said copartnership is hereby dissolved.

NOW, THEREFORE, this indenture, made this day of , in the year , between the said A. B., party of the first part, and the said Y. Z., party of the second part, WITNESSETH: That the copartnership aforesaid is hereby, by mutual consent, dissolved and terminated; and the said A. B. doth hereby sell and assign to the said Y. Z. his moiety of all the stock in trade, and property, of every description, belonging to the said copartnership, wherever the same may be, together with all debts and things in action, due said firm, from all persons.

TO HAVE AND TO HOLD the same to the said Y. Z., and his assigns, forever, in trust, for the following purposes, namely: That the said Y. Z. shall sell and dispose of all the property and effects belonging to said firm, at such time and in such manner as he may think prudent; and shall, with reasonable diligence, collect all the debts due said firm; and shall, out of the proceeds of said sales, and with the moneys thus collected, pay all the debts now due from said firm, as far as the proceeds of said sales, and the sums of money collected, will go; and after fully satisfying all demands against said firm, if there be

any surplus, shall pay over one moiety thereof to said A. B., or his personal representatives.

AND the said A. B. doth hereby constitute the said Y. Z. his attorney, irrevocable, in his the said Y. Z.'s own name, or in the name of the said firm, to collect all debts due said firm; to institute and prosecute suits for the recovery of said debts, or to compound the same, as he may judge most expedient; to defend all suits against said firm; to execute all such acquittances as may be necessary; and, generally, to do all such acts and things as may be necessary or proper, for complete settlement of all the business and concerns of the said copartnership.

AND the said Y. Z., for himself, and his heirs, executors, and administrators, hereby covenants with the said A. B., and his executors, administrators, and assigns, that he will sell and dispose of all the said partnership property and effects, to the best advantage; that he will use his best endeavors to collect all debts due said firm; and that he will faithfully apply the proceeds of sales, and the moneys collected, to the payment of all debts due from said firm, so far as the same will go; and after discharging all such debts, will pay over to the said A. B., or his representatives, one moiety of any surplus that may remain; and further, that he will keep an accurate account of all moneys received by him, for goods sold or debts collected, as well as of all moneys paid out, and will render a just account thereof to the said A. B., or his personal representatives.

AND the said A. B., for himself, his heirs, executors, and administrators, covenants with the said Y. Z., his executors, administrators, and assigns, that if it shall be found that the debts due from said firm exceed the amount of moneys received from the sale of said partnership property and the debts collected, he will pay the said Y. Z., or his assigns, one moiety of any balance that may then be found due from the said firm.

IN WITNESS, etc.

NOTE.—For assignments of letters-patent and interests therein, see chapter on PATENTS.

279. Assignment of Policy of Insurance.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the Insurance Company have heretofore, for value received, issued to me their policy of insurance, in writing, dated the day of , , and numbered No. , whereby they insured the building [*specify the building insured*], against loss or damage by fire [*or, the life of , or otherwise state the nature of the policy to be assigned*], in the sum of dollars.

Now, I, A. B., of , in consideration of dollars, lawful money of the United States [to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto Y. Z., of , the said policy of insurance, and all sum and sums of money, interest, benefit, and advantage, whatsoever, now due, or hereafter to arise, or to be had or made, by virtue thereof;

TO HAVE AND TO HOLD the same unto the said Y. Z., and his executors, administrators, and assigns, forever.

IN WITNESS, etc.

280. Approval, to be Indorsed on the Preceding Assignment.

The above assignment is approved.

Insurance Company.

By M. N., President [or, Secretary].

NOTE.—The assignment of life insurance policies, especially in favor of married women, is often governed by statute. For the law in New York, see Birdseye, C. & G. Cons. Laws, p. 1044.

281. Assignment of Recipe for Making a Medicine.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, I, A. B., of _____, am the inventor and proprietor of a certain method of manufacturing a certain useful and marketable medicine known as the Eagle Tonic Bitters, according to a recipe in my possession.

Now, I, the said A. B., in consideration that Y. Z., of _____, has made and delivered to me his covenant in writing and under seal, to pay to me the sum of _____ dollars in each and every year for _____ years, out of the profits of him, or his executors, administrators, or assigns, in making and selling said medicine, have delivered unto the said Y. Z. a recipe, or paper writing, containing directions for manufacturing said medicine, and have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said Y. Z., the exclusive right as against me, and my executors, administrators, and assigns, to manufacture and sell the said medicine forever.

AND I do for myself, my executors, administrators, and assigns, covenant and agree to and with the said Y. Z., his executors, administrators, and assigns, that the said recipe contains full, true, and exact directions for making the said medicine; that I have not heretofore, and will not at any time hereafter, without the consent of him or them, directly or indirectly, disclose the secret of the composition thereof; and that I will not, without the like consent, make or compound for sale, or sell, or be in any way interested in making or compounding for sale, or selling, the said medicine, or any medicine containing the same or similar ingredients, and designed for the like purpose.

IN WITNESS, etc.

282. Assignment by a Sheriff, to his Successor in Office.¹

THIS INDENTURE, made this _____ day of, etc., between A. B., former sheriff of the county of _____, of the first part, and Y. Z., the present sheriff thereof, of the second part, WITNESSETH: That the said A. B. doth, by and with these presents, deliver to the said Y. Z., his said successor, the jail of the said county, with its appurtenances, with the property of the said county therein, all the

¹ In New York, by the County Law, § 195, Birdseye, C. and G. Cons. Laws, p. 805, when the new sheriff has qualified and given security as required by law, the county clerk must furnish to him a certificate under his hand and official seal, stating that the new sheriff has so qualified and given security. Upon the commencement of the new sheriff's term of office, and the service of the above certificate, the former sheriff's powers cease, except as prescribed by law, and within ten days after the service of the certificate the former sheriff must deliver the jail, prisoners, process,

etc., to the incoming sheriff. At the time of the delivery, the former sheriff must execute an instrument reciting the property, documents, and prisoners delivered, specifying particularly the process or other authority by which each prisoner was committed and is detained, and whether the same has been returned or is delivered to the new sheriff. The instrument must be delivered to the new sheriff, who must acknowledge in writing upon a duplicate thereof the receipt of the property, etc., and deliver such duplicate and acknowledgment to the former sheriff.

prisoners confined therein, all process, orders, rules, commitments, and all other papers and documents, in the custody of the said A. B., as former sheriff, as aforesaid, authorizing or relating to the confinement of such prisoners, and each and every of them; and in those cases where any such process has been returned, a statement in writing of the contents thereof, and when returned; all writs, summonses, and complaints, to be served, and all *mesne* process, and all precepts and other documents for summoning of a grand or petit jury, now in the hands of the said A. B., and which have not yet been fully executed by him; all executions, attachments, and final process, now in the hands of the said A. B., except such as he has executed, or has begun to execute, by the collection of money thereon, or by a levy on property, in pursuance thereof. The delivery is made under and in pursuance of [*here specify the statute*]. And the said A. B. doth also herein and hereby recite and certify the property, process, documents, and prisoners delivered, specifying herein the process, or other authority, by which each of those prisoners was committed and is detained, and whether the same be returned or delivered to the said Y. Z., the said present sheriff (who hath, on the duplicate hereof, acknowledged in writing the receipt of such property, process, documents, and prisoners herein specified) — that is to say:

1. The property herewith delivered is as follows: [*specify it.*]

2. The process herewith delivered is as follows: [*give names of parties, description of process, title of court.*]

3. The documents herewith delivered are as follows: [*give list of them.*]

4. The prisoners herewith delivered are as follows: [*name them, with the dates of commitment, offenses, etc.*]

IN WITNESS WHEREOF, the parties hereto have hereunto interchangeably set their hands and seals, the day and year first above written.

Sealed and delivered in presence of

A. B. [SEAL.]

[*Witnesses' names.*]

Y. Z. [SEAL.]

283. Assignment of Shares of Corporate Stock, to be Indorsed upon the Back of the Certificate.

For value received, I hereby sell, assign, and transfer unto _____, the shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint _____ my attorney to transfer the said stock on the books of the within-named company, with full power of substitution and revocation.

Dated, _____,

[*Name and seal.*]

In presence of

284. Assignment of Shares of Corporate Stock.

[*As in Form 258 to the *, continuing thus:*] all my right, title, and interest in the shares, scrip, and capital stock and property of the corporation and concern known as the _____ Company, which company has its place of business in the _____ county, in the state of _____.

AND I further covenant and agree, to and with the said Y. Z., his executors, administrators, and assigns, that at the request of him, or them, I and my executors, administrators, and assigns, shall and will at all times hereafter execute any instrument that may be necessary to vest completely in him, or them, all my right, title, and interest, to said property, scrip, and stock, and to enable him or them to possess, control, enjoy, and transfer, all the property and choses in action herein assigned, or intended to be assigned.

285. Assignment of Shares in Building Loan Association.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, in consideration of a loan made to me by the Building and Loan Association of _____, of _____ dollars, have agreed to assign and transfer, and do hereby assign and transfer unto the said association, its successors and assigns, all my right, title, and interest in and to _____ shares of the stock of said association, Certificate No. _____, issue _____, now belonging to me, and standing in my name, as a security collateral to my bond this day given to the said association for the payment of said loan and interest and premium thereon, and the monthly dues on said stock at the times and in the manner therein mentioned. And I hereby authorize said association, in case I should make default in the payment of said loan and interest thereon, or any part thereof, or in the payment of monthly dues, as required by said bond, or any fines, and shall so remain in default for three months, to cancel said shares of stock above described, and apply the withdrawal value thereof at such time upon my said loan, and in the event any surplus remains after the full payment of said loan and interest thereon, premiums, dues, and fines, the same shall be paid to my executors, administrators, or assigns, and I hereby covenant and agree with said association to continue to pay dues upon said shares of stock until said loan shall be wholly paid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____,

Signed, sealed, and delivered in the presence of _____ [Signature and seal.]

286. Assignment of Wages Due.

[As in Form 258 to the *, continuing thus:] any and all sum or sums of money now due, or to grow due, to me from M. N., as wages for my services as seaman on board the ship _____, during her voyage from New York to Liverpool and back in the year _____ [or, as journeyman carpenter, between the _____ day of _____, and the _____ day of _____, or otherwise specify the services for which wages are claimed]. And I do hereby give the said Y. Z., his executors, administrators, and assigns, the full power and authority to ask, demand, collect, receive, compound, and give acquittance for the same, or any part thereof, and in my name or otherwise, but at his or their own cost, to prosecute and withdraw any suits or proceedings at law or in equity therefor.

IN WITNESS, etc.

287. Assignment of Miscellaneous Property, Described in a Schedule.

[As in Form 258 to the *, continuing thus:] all the goods, wares, merchandise, notes, accounts, debts, demands [or otherwise, according to the contents of the schedule], specified in the schedule annexed to this assignment, to have and to hold the same unto the said Y. Z., his executors, administrators, and assigns, forever, to and for his and their own proper use and benefit.

[Add power to sue, and special covenants such as may be appropriate to the nature of the scheduled property, forms for which will be found above. Annex schedule designating the property to be assigned.]

288. Assignment by a Corporation.

KNOW ALL MEN BY THESE PRESENTS, that the A. B. Company, of _____, a corporation organized under the laws of the state of _____, and having a

principal office at _____, in said state, in pursuance of a resolution of the directors of the said company, passed on the _____ day of _____, _____, in consideration of _____ dollars [to it paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], has sold, assigned, transferred, and set over, and by these presents does sell, assign, transfer, and set over, unto Y. Z., of _____, all the shafting, machinery, tools, dies, moulds, furniture, and fixtures belonging to it, and contained in its factory building at _____; also all the stock and material of every kind, whether in a raw, manufactured, or partially manufactured state; all farm produce and farming implements, and all office and household furniture, and fixtures of every kind, belonging to it and contained in its building, and on its premises at _____, and in its office at _____; together with all goods and merchandise belonging to it on the _____ day of _____, _____, in the hands of [naming any agents of the company holding its goods for sale].

For a more full and accurate description of the property hereby conveyed, reference is made to an inventory of said property, bearing date on the _____ day of _____, 18 _____, and contained in the inventory book of said company [or otherwise designate the inventory].

IN WITNESS WHEREOF, the said company has caused these presents to be signed in its name, by its president, and sealed with its corporate seal, attested by its secretary, this _____ day of _____, _____.

In presence of _____ A. B. Company, by M. N., President.
 [Witness's name.] [CORPORATE SEAL.] Attest: O. P., Secretary.

CHAPTER IX.

ASSIGNMENTS IN TRUST FOR CREDITORS.

WHAT is commonly known as a general assignment, or an assignment in trust for the benefit of creditors, is usually a transfer of all, or the bulk of the property of one who finds himself to be insolvent, to a trustee, upon trust to sell it and distribute the proceeds among the creditors of the insolvent.

As respects the way in which the various creditors shall share in the distribution of their debtor's assets, the debtor, in the absence of legislation to the contrary, may distribute his property among them as he pleases. To restrain frauds and mischief arising under the free operation of this rule, the statute 13 Eliz., c. 5, was passed. It recites that transfers of property were often made with intent to "delay, hinder, and defraud creditors and others" of their just and lawful demands; and declares every transfer of property made with such intent to be void as against the persons delayed, etc.

The principle of this statute has been generally adopted throughout the United States as a part of our common law. Irrespective of any special statute in the particular state, the validity of an assignment, upon its face, is ordinarily tested by inquiring whether its provisions are such that it tends to delay, hinder, or defraud creditors, so that it falls within the prohibition of the statute of Elizabeth.

In addition to the adoption of the principle of the English statute as a part of our jurisprudence upon this subject, many of the United States have passed special statutes; — either recognizing the right of a debtor to give certain creditors a preference over others in the distribution of the property he may assign, but providing strict guards against fraud in the exercise of that right; or allowing the bare right to make an assignment for the benefit of all creditors, but forbidding any preference or favor of one over another.

An assignment with preferences must be drafted in such a manner that none of its provisions can be seen to create or involve any unnecessary delay, hin-

drance, or embarrassment to the general right of the creditors as a body, to have the assets of the debtor converted into money, and that money applied, as far as it will go, in discharge of his debts. If this right is injuriously affected by the instrument, it will be adjudged void.

Thus it is held that any clauses in an assignment which confer any power or privilege upon the assignee inconsistent with the simple duty of converting the assets promptly into cash, and distributing it among the creditors, or which give him a compensation or advantage therein not allowed by law, operate to defraud creditors, and render the assignment void. But clauses which merely express in terms powers or rights which the law would confer upon the assignee were they not expressed, are unobjectionable.

Thus, again, provisions which tend to secure some ultimate surplus or other benefit or advantage to the assignor, render the assignment void.

Thus, again, any language in an assignment, which enables the assignor to exercise a future preference among his creditors, avoids the instrument.

Thus, again, all provisions which disclose an endeavor to empower the assignor to impose conditions upon creditors, before paying their demands, avoid the assignment.

Thus, again, any directions to the assignee to deal with the estate in a given way, to increase the amount to be realized from it, avoid the assignment, whenever they operate to *delay* a sale.

Thus, again, any permission given in the assignment to the assignee to sell upon credit, although with a view to realize a larger sum for ultimate distribution, avoids the assignment.

It is also necessary to the validity of an assignment that it should be made in good faith, without any actual intent to defraud any one. And there are some restrictions relating to the classes of persons who may make preferential assignments.

A general assignee for the benefit of creditors stands in no better position, and has no higher rights in respect to enforcing choses in action transferred by the assignment than those of his assignor. He is not to be regarded as a purchaser for a valuable consideration.

Notwithstanding an assignment is originally invalid as against creditors generally, for such defects as are pointed out above, it is valid as between the parties to it, and as against all creditors who have assented to it, or in any way ratified it.

In the state of New York, these proceedings are regulated by the Debtor and Creditor Law. Birdseye, C. & G. Cons. Laws, pp. 860-937. The statutory provisions in other states are very similar to those of New York. The material provisions of the law are as follows:

Every assignment has to be in writing, acknowledged and recorded in the office of the county where the assignor has his principal place of business. A certified copy of such an assignment is also to be filed in the county where any real property of the assignee may be situated. The assignment must also contain the residence, location, and kind of business of the assignor, and the assent of the assignee, subscribed and acknowledged by him, is to be annexed to the assignment before the same can be recorded.

Wages and salaries are preferred. Preferences, except wages and salaries, are allowed only to the extent of one-third of the assigned estate, after deducting such wages, salaries, etc. But if the estate is insufficient to pay all the preferred claims, the same is to be applied in payment *pro rata*.

At the time of the assignment, or within twenty days afterwards, an inventory under oath is to be prepared, and the same is to contain:

1. The name, occupation, places of business and residence of the assignor.
2. The name and place of residence of the assignee.
3. An account of all the creditors, stating their places of residence, the sums owing to each, and the consideration for the indebtedness; also a statement of any security given for the payment of the same.
4. An inventory of the assignor's estate, and the date of assignment with the incumbrances thereon and all vouchers and securities relating thereto, and the nominal as well as the actual value of the same according to the best of his knowledge.

5. An affidavit by the assignor that the inventory is in all respects just and true. If the assignor should fail to deliver an inventory within the specified time, the assignee may, within thirty days after the assignment, prepare an inventory under oath. The books and papers of the assignor are open for examination and inspection for the purposes of preparing the inventory.

Before entering upon his duties, the assignee must, within thirty days after the assignment, file in the county clerk's office where the assignment is recorded, a bond for the amount fixed by the judge, with sufficient sureties to be approved by the same.

The failure to file a bond does not deprive the county judge of jurisdiction over the assignee and the insolvent estate. Further security may also be required by the judge if he should deem it necessary.

On petition by the assignee, the judge may authorize him to advertise for claims of creditors to be presented not less than within thirty days from the last publication. The advertisement is to be made in two newspapers not less than once a week for six successive weeks.

The assignee may be removed for misconduct or incompetency, or may be discharged on his own petition, on five days' notice to the assignor and other interested persons. His bond is to be canceled upon discharge. On the death of the assignee, the personal representatives may be substituted in his stead, or another assignee may be appointed. At any time, on the petition of the assignee, or after one year from date of assignment, on the petition of a creditor, or the assignee's surety, or where the assignee has been removed or ordered to account, the court may issue a citation to all parties interested, requiring them to appear in court and show cause why a settlement with the assignee should not be had. A citation issued on the petition of a creditor may be served on the assignee alone, and on its return the assignee may require a general citation to issue to all persons interested. Such citation need not be served on creditors who have not presented their claims. On proof that the creditors exceed twenty-five in number, the judge may direct that the citation may be served by mailing a notice of the same to each of these creditors at least thirty days before the return day, and by publishing the citation once a week for at least four weeks prior to the return day in one or more newspapers. The judge may also direct service to be made by publication where the party to be served is unknown or his residence cannot be found, or where he cannot be found in the state. Such publication must be made not less than once a week for six weeks, and a copy of the citation is to be mailed to each of the known creditors at least thirty days before the return day. Where service by publication has been ordered, a personal service of a citation within thirty days, if within the United States, or within forty days, if without the United States, before the return day, is equivalent to publication and mailing.

On a proceeding for an accounting the court shall have the power:

1. To examine the parties and witnesses on oath in relation to all matters concerning the assignment, and compel their attendance, and the production of books and papers.
2. To require and compel, if necessary, the assignee to file an account of his proceedings.
3. To take and state such account or to appoint a referee to do so.
4. To settle and adjudicate upon the account and the claims presented.
5. To discharge the assignee and his surety upon performance of the decree, or upon proof of composition between the assignor and his creditors, provided that if there be any creditors not assenting to the composition, the court shall determine what proportion of the fund shall be paid to or reserved for creditors not assenting, which shall not be less than the sum or share to which they would be entitled if no composition had been made, and may decree distribution accordingly.
6. To adjourn the proceedings when necessary.
7. To punish contempt of court.
8. To exercise such other further powers as the surrogate may exercise in an accounting by an executor or an administrator.

The court may also at any time order the examination of witnesses and the production of books and papers, and the answer of no witness shall criminate him.

The judge may, upon application of the assignee, upon terms to be fixed, ratify, or direct, or authorize the sale, compromising or compounding of any claim belonging to the estate. The assignee is responsible for any sum which might or ought to have been collected by him.

Any disputed matter may be ordered for trial by jury or before a referee, and the court may award reasonable counsel fees and costs, and the assignee shall receive for his services five per cent. of the whole sum received.

It may be laid down as a general principle that the existence of a bankruptcy law suspends *ipso facto* the operation of state insolvent laws.¹ The right, however, to make general, voluntary assignments is a principle of the common law, and exists independent of any statute laws.² Under the Bankruptcy Law of 1898, c. 3, § 3, subd. 4, a general assignment for the benefit of creditors constitutes an act of bankruptcy.

See also chapter on DEBTOR AND CREDITOR.

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289. Assignment by an Individual, Without Preferences.

THIS INDENTURE, made this day of , , between A. B., of , party of the first part, and Y. Z., of , party of the second part.

WHEREAS, the party of the first part owes divers debts, which he is unable to pay in full, and is desirous to provide for the payment of the same, as far as in his power, by an assignment of all his property for that purpose.

NOW THIS INDENTURE WITNESSETH: That the party of the first part, in consideration of the premises, and of one dollar to him paid before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the party of the second part, his heirs, executors, administrators and assigns, all and singular the lands, tenements, hereditaments and appurtenances, goods, chattels, stocks, promissory notes, debts, choses in action, evidences of debt, claims, demands, property, and effects of every description belonging to the party of the first part, wherever the same may be situated; the same being more fully and particularly enumerated and described in a schedule thereof hereto annexed, marked Schedule A.

¹ Sturgis v. Crowninshield, 4 Wheat. 122; Bentley, 59 N. Y. 649; Boese v. Kings, 78 id. Ogdon v. Saunders, 12 id. 213. 471; aff'd, 108 U. S. 879.

² Cook v. Rogers, 81 Mich. 391; Thrasher v.

To HAVE AND TO HOLD the same, and every part thereof, in trust for the uses and purposes following:

To take possession of the said property, and to sell and dispose of the same, with all reasonable diligence, either at public or private sale, and for the best prices that can be obtained therefor, and to convert the same into money; and also to collect all such debts and demands hereby assigned, as may be collectible.

And with and out of the proceeds of such sales and collections:

1. To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment, and of carrying into effect the trust hereby created, including the lawful commissions of the party of the second part, for his services in executing the said trust.

2. To pay the wages and salaries owing to employees of said party of the first part, amounting to about dollars.

3. To pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due, or to become due, from the said party of the first part, and which are particularly mentioned and described in the schedule hereto annexed, marked Schedule B, together with all interest moneys due and to grow due thereon. And if the residue of the said proceeds shall not be sufficient to pay the said debts and liabilities, and interest moneys in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest moneys, proportionably to their respective amounts.

And if, after payment of all the costs, charges, and expenses attending the execution of the said trust, and the payment and discharge in full of all the lawful debts owing by the said party of the first part, of any and every description, there shall be any surplus of the said proceeds remaining in the hands of the party of the second part; then,

Lastly, to repay such surplus to the party of the first part, his executors, administrators, or assigns.

And for the better and more effectual execution of these presents, and of the trusts hereby created and reposed, the party of the first part doth hereby make, constitute, and appoint the party of the second part his true and lawful attorney irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of the said trust; and for the purposes of said trust to ask, demand, recover, and receive of and from all and every person and persons, all the property, debts, and demands belonging and owing to the party of the first part, and to give acquittances and discharges for the same; and to sue, prosecute, defend, and plead for the same; and to execute, acknowledge, and deliver all deeds and instruments of conveyance necessary or proper for the better execution of the trust hereby created; and also for the purposes aforesaid, or for any of them, to make, constitute, and appoint one or more attorneys under him, and at his pleasure to revoke the same; hereby ratifying and confirming whatever the said party of the second part, or his substitute, shall lawfully do in the premises.

And the party of the second part doth hereby accept the trust created and in him reposed by these presents; and doth for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said party of the first part, his executors, administrators and assigns, that he, the said

party of the second part, will honestly and faithfully, and without delay, execute the same according to the best of his skill, knowledge, and ability.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of

A. B. [SEAL.]

Y. Z. [SEAL.]

[Witnesses' names.]

[Acknowledgment.]

290. The Same; Another Form.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, I, A. B., of , am indebted to divers persons in considerable sums of money, which I am at present unable to pay in full, and am desirous to convey all my property for the benefit of all my creditors without any preference or priority.

NOW, THEREFORE, I, the said A. B., in consideration of the premises, and of one dollar to me paid by Y. Z., of , the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said Y. Z., all my lands, tenements, hereditaments, goods, chattels, property, and rights in action of every name, nature, and description, wheresoever the same may be, except such property as is by law exempt from execution.

TO HAVE AND TO HOLD the same unto the said Y. Z., in trust, to sell and dispose of the said real and personal property, and to collect the said rights in action, with the power to compound for the said rights in action, taking a part for the whole, where the said Y. Z. shall deem it expedient so to do; and then in trust to apply the proceeds of the said property and rights in action in the following manner:

1. To pay the costs and charges of these presents, and the lawful expenses of executing the trust hereby created, and the wages or salaries actually owing to the employees of the said A. B.

2. To distribute and pay the remainder of said proceeds to the creditors of me, the said A. B., for all debts and liabilities which I may be owing or indebted to any person whatever; provided, however, that if there shall not be sufficient funds with which to pay all my said debts, then the said debts are to be paid ratably and in proportion.

3. The residue and remainder of said proceeds, if any there be, after paying all my said debts in full, the said Y. Z. is to repay to me, or to my executors, administrators, or assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , .

In presence of

A. B. [SEAL.]

[Witnesses' signatures.]

291. Acceptance by Assignee.

I hereby accept the trust created by the above instrument, and agree faithfully to perform the same.

[Date.]

Y. Z.

[Acknowledgment.]

292. Assignment by Copartners, with Preferences.

THIS INDENTURE, made this day of , in the year of our Lord, one thousand nine hundred and ,

BETWEEN A. B., of the city of Albany, county of Albany, and state of

New York, and C. D., of the same place, who have heretofore composed the partnership of A. B. & Co., heretofore doing business at the city of Albany aforesaid, parties of the first part, and E. F., of the city of Albany, county of Albany, and state aforesaid, party of the second part,

WITNESSETH:

THAT, WHEREAS, the said parties of the first part are justly indebted to sundry persons in divers and sundry sums of money, and being unable to pay the same in full, are desirous of making an equitable distribution of their property and effects among their creditors.

NOW, THEREFORE,

First: The parties of the first part, in consideration of the premises and the sum of one dollar to them in hand respectively paid, by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set and delivered over and conveyed, and by these presents do grant, bargain, sell, assign, transfer, and set and deliver over and convey unto the said party of the second part, his successors or assigns, all and singular, their copartnership and individual estate and property, real and personal, of every name and kind whatever and wheresoever situated, held by and in the name of the said parties of the first part, and each and either of them, or by and in the name of any other person, for them, or either of them, except such property, if any, held or owned by said parties of the first part, separately and individually, as is exempt by law from levy and sale under execution or otherwise.

TO HAVE AND TO HOLD the same and every part and parcel thereof, with the appurtenances to the said party of the second part, his successors and assigns:

IN TRUST, nevertheless, for the following uses and purposes, viz.:

Second: The party of the second part shall forthwith take possession of all and singular the estate, property, and effects hereby above assigned, transferred and conveyed, and set and delivered over, or intended so to be, and shall, with all reasonable diligence, sell and dispose of the same and convert the same into money, and shall collect any and all bills, promissory notes, bonds, accounts, choses in action, claims, demands, and money due or owing to said parties of the first part, as such copartners or individuals, so far as the same shall prove collectible:

Third. Out of the proceeds of said sales, collections, and estate and property, the said party of the second part is authorized to pay and retain all reasonable costs, charges, and expenses of making, executing, and carrying into effect this assignment, including the lawful commissions of the said party of the second part, for his services in executing and carrying out the trust created in this behalf in this assignment.

Fourth. Out of the proceeds of said sales, collections, and estate and property, the said party of the second part shall pay and discharge the wages or salaries actually owing to the employees of said parties of the first part at the time of the execution of this assignment, amounting to about dollars. If, however, such proceeds shall not be sufficient for that purpose, then the said party of the second part shall apply the same to, and in payment of the same, *pro rata*, and in proportion to the respective amounts of each of such claims.

Fifth: With and out of the proceeds of the separate and individual prop-

erty of each of the said parties of the first part, the said party of the second part shall pay in full the separate and individual debts and liabilities, of each of said parties of the first part. If the net proceeds of the separate and individual property of each or either of the said parties of the first part is insufficient to pay his separate and individual debts and liabilities in full, then the proceeds of the individual property of the said party of the first part so insufficient to pay his debts and liabilities in full shall be applied *pro rata* to the payment of such party's separate and individual debts and liabilities. If, however, any surplus remains of the net proceeds of the said separate and individual property of either of the parties of the first part, after the payment of his separate and individual debts and liabilities in full, the said surplus shall be applied towards the payment of the copartnership debts and liabilities of the said parties of the first part.

Sixth: With and out of the proceeds of the copartnership property, together with the surplus, if any, of the proceeds of the individual property of the said parties of the first part, or either of them, the said party of the second part shall pay all and singular, the copartnership debts set down and enumerated in the schedule hereto annexed, marked Schedule "A," in full, with lawful costs and interest, if the said net proceeds and said surplus shall be sufficient for that purpose, and if the same be not sufficient, then the said party of the second part shall apply the same to and in the payment of the said partnership debts ratably and in proportion to the respective amounts thereof.

Seventh: And after paying and discharging all of the aforesaid copartnership debts, as above provided, the said party of the second part, with and out of the said proceeds and surplus, if any, shall pay in full, all and singular, the partnership debts set forth and enumerated in the schedule hereto annexed, marked Schedule "B," with lawful costs and interest, if the said net proceeds and said surplus shall be sufficient for that purpose, and if the same be not sufficient, then the said party of the second part shall apply the same to and in payment of the said partnership debts mentioned in said "Schedule B," ratably and in proportion to the respective amounts thereof.

Eighth: After fully paying, satisfying and discharging all the aforesaid copartnership debts, as above provided, and which are thereby intended to be preferred as aforesaid, the said party of the second part shall pay out of the residue of said net proceeds and surplus, if the same shall be sufficient therefor, to each and every of the other or remaining creditors of the said parties of the first part, as such copartnership, the full sum that may be justly due and owing to them respectively from said copartnership, without any priority or preference whatever; and if the residue of said proceeds and surplus shall not be sufficient to pay and satisfy in full the debts of each and all of the remaining creditors of said copartnership, then the said party of the second part is hereby directed out of the said residue to pay the said remaining creditors ratably and in proportion to the amount due and owing to each of them.

Ninth: If any surplus shall remain of the property and estate hereby assigned, after the payment of all the just debts owing by the parties of the first part, or either of them, the party of the second part shall return the same to the parties of the first part, their heirs, executors, administrators, or assigns, according to their respective rights thereto.

AND, in furtherance of the premises, the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their

true and lawful attorney, irrevocable, with full power of substitution and revocation, and with full power and authority to do all acts and things which may be necessary in the premises for the full execution of the trust hereby created, and to ask, demand, recover, and receive of and from all and every person or persons, all property, debts, and demands due, owing and belonging to the said parties of the first part, or each or any of them, and to give acquittances and discharges for the same, and to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances.

AND the said parties of the first part do hereby authorize the party of the second part to sign or endorse their names or the copartnership name of the parties of the first part, to or upon any check, draft, promissory note, or other instrument in writing, for the payment of money, which is payable to the order of the parties of the first part in their copartnership name or otherwise, and to sign their names or the said copartnership name to any instrument in writing of any name, kind, or nature, which may be necessary to more fully carry into effect the object, design, and purpose of this trust.

AND the said party of the second part doth hereby accept the trust created in him, and in him reposed by these presents, and doth for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said parties of the first part, their heirs, executors, administrators, and assigns, that he, the said party of the second part, will honestly and faithfully and without delay, execute the same according to the best of his skill, knowledge, and ability.

IN WITNESS WHEREOF, we, the said parties to these presents, have hereunto set our hands and seals, the day and year first above written.

Sealed and delivered in the presence of

I. J.

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

[*Acknowledgment.*]

SCHEDULE "A."

Referred to and forming part of the foregoing assignment, containing a statement of the names of the creditors preferred in the sixth paragraph in such assignment, the general nature of said indebtedness, and the amounts thereof. [*Here give particulars of preferences.*]

SCHEDULE "B."

Referred to in and forming part of the aforesaid assignment, containing a statement of the names of the creditors preferred in the seventh paragraph in such assignment, the general nature of said indebtedness, and the amounts thereof. [*Here give particulars of preferences.*]

293. The Same; Another Form.

THIS INDENTURE, made the day of , , between A. B. and C. D., copartners under the name, style, and firm of A. B. & Co., of , parties of the first part, and Y. Z., of the same place, party of the second party.

WHEREAS, the said copartnership is justly indebted in sundry considerable sums of money, and has become unable to pay and discharge the same with punctuality or in full, and the said parties of the first part are now desirous of making a fair and equitable distribution of all their property and effects among their creditors.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said parties of the

first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, release, assign, transfer, and set over unto the said party of the second part, and to his heirs and assigns, forever, all and singular the lands, tenements, hereditaments, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of the said parties of the first part.

TO HAVE AND TO HOLD the same, and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns.

IN TRUST, nevertheless, to and for the following uses, intents, and purposes — that is to say, that the said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property, and effects hereby assigned, and sell and dispose of the same for the best prices which he shall be able to obtain, and convert the same into money, and shall also collect all and singular said debts, due-bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible, and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid; and by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the lawful expenses, costs, charges, and commissions of executing and carrying into effect this assignment; and by and with the residue or net proceeds and avails of such sales and collections, the said party of the second part shall:

1. Pay the wages actually due to the employees of said A. B. & Co.
2. Pay and discharge in full the debt due to the firm of M. & Co., of _____, for the sum of \$ _____.
3. By and with the residue and remainder of said net proceeds and avails, pay and discharge the several and respective debts, bills, notes, or sums of money due, or to grow due, from the parties of the first part to the persons designated in the schedule hereto annexed, together with such interest as may accrue thereon; and if such net proceeds and avails shall not be sufficient to pay the same in full, then such net proceeds and avails shall be distributed *pro rata* among said persons, according to the amount of their respective claims.
4. By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay and discharge all the other copartnership debts, demands, and liabilities whatsoever, now existing, whether due or hereafter to become due, provided such remainder shall be sufficient for that purpose; and if not sufficient, then the same shall be applied *pro rata* to the payment of said debts, demands, and liabilities, according to their respective amounts.
5. By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay and discharge all the private and individual debts of the parties of the first part, or either of them, whether due or to grow due, provided such remainder shall be sufficient for the purpose; and if insufficient, then the same shall be applied *pro rata*, share and share alike, to the payment of said debts, according to their respective amounts.

And for the better execution of these presents, and of the several trusts hereby reposed, the said parties of the first part do hereby make, nominate, and appoint the said party of the second part the true and lawful attorney irrevocable of them and of each of them, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises, as fully and completely as the said parties of the first part, or either of them, might or could do, were these presents not executed; and attorneys, one or more, under him, to make, nominate, and appoint, with full power of substitution and revocation, hereby ratifying and confirming all and everything that our said attorney, or his attorneys, shall do or cause to be done in the premises.

And the party of the second part hereby accepts the trust created by these presents, and covenants that he will faithfully perform the same.

IN WITNESS WHEREOF, etc.

[*Anneæ a schedule describing the debts intended to be preferred in the second class.*]

294. Inventory.

The following is a full and true inventory of all the estate, both real and personal, of the copartnership firm of A. B. & Co., in law and equity, and the incumbrances existing thereon, and all the vouchers and securities relating thereto, and the value of such estate, according to the best knowledge and belief of the individuals composing said copartnership:

STATEMENT OF PROPERTY OF ESTATE.

| Description of property and where situated. | Incumbrances. | Estimated market value above all incumbrances. | Vouchers and securities. |
|---|---------------|--|--------------------------|
| | | | |

SCHEDULE OF CREDITORS OF ESTATE.

| Name of creditor. | Residence. | Amount due to creditor, and nature thereof. | Consideration of indebtedness, and when contracted. | Judgment, mortgage, collateral, or other security for indebtedness. |
|-------------------|------------|---|---|---|
| | | | | |

SCHEDULE OF DEBTS DUE TO ESTATE.

| Name of debtor. | Amount of claim. | Good. | Doubtful. | Bad. | Remarks. |
|-----------------|------------------|-------|-----------|------|----------|
| | | | | | |

295. Affidavit to Inventory and Schedules.

STATE OF NEW YORK, }
 County of , } ss.

A. B., of , and C. D., of , copartners, members of the copartnership firm of A. B. & Co., formerly doing business in the city of , being severally sworn, say, and each of them for himself says, that he has read the foregoing inventory and schedules, and that the same are in all respects just and true according to the best of his knowledge and belief.

Sworn to before me, this
 day of , .

296. Bond of Assignee.

KNOW ALL MEN BY THESE PRESENTS, that we, Y. Z., of , and M. N. and O. P., of the same place, are held and firmly bound unto the people of the state of New York, in the sum of dollars, lawful money of the United States of America, to be paid to the said the people of the state of New York or their assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals.

Dated the day of , .

WHEREAS, one A. B. has made an assignment of all his goods, chattels, and credits to the above-named Y. Z., for the payment of the debts of the said A. B., as expressed in said instrument of assignment, bearing date the day of , , and recorded in the clerk's office of the county of , on the day of , , which said assignment the said Y. Z. has accepted. Now the condition of this obligation is such, that if the said Y. Z. shall faithfully discharge the duties as such assignee, and duly account for all moneys received by him as such assignee, then this obligation to be void; otherwise, to remain in full force and virtue.

In presence of,
 [Acknowledgment.]

Y. Z. [SEAL.]
 M. N. [SEAL.]
 O. P. [SEAL.]

297. Approval to be Indorsed on Preceding Bond.

I hereby approve of the form and sufficiency of the within instrument.

H. L. S.,
 County Judge.

298. Affidavit to Obtain Order Authorizing Assignee to Advertise for Claims.

Court,
 For the County of .

In the Matter of the General Assignment of A. B. to Y. Z., for the Benefit of Creditors.

COUNTY OF , ss.:

Y. Z., being duly sworn, says that on the day of , , A. B., above named, made and executed, in due form of law, a general assignment of all his property to deponent, as assignee, for the benefit of his creditors,

which said assignment was, on the _____ day of _____, duly recorded in the office of the clerk of the county of _____, where said A. B. then resided, and still resides; that a bond on the part of deponent as such assignee, approved by one of the judges of this court, was on the _____ day of _____, duly filed, and that deponent has accepted said trust, and entered upon the discharge of his duties as such assignee.

Deponent further says that none of the creditors of the said A. B., entitled to share in the distribution of the said trust estate, reside out of the state of _____, or [that deponent has reason to believe that certain of the creditors of the said A. B., entitled to share in the distribution of said estate, reside out of the state of _____].

No other application has been made for this or a similar order.

Sworn to before me, this _____ day of _____.

Y. Z.

299. Order of Publication of Notice to Creditors.

Court,
For the County of _____
[Title as above.]

On the annexed affidavit of Y. Z., and on application of Y. Z., assignee of the estate of A. B., in trust for the benefit of the creditors of said A. B., and it appearing to my satisfaction that none of the creditors of the said A. B., entitled to share in the distribution of the said trust estate, reside out of the state of _____, or, [that certain of the creditors of the said A. B., entitled to share in the distribution of the said trust estate, reside out of the state of _____]: It is

ORDERED, that the said Y. Z., assignee of the said trust estate, he and he hereby is authorized and empowered to advertise by publication for creditors to present to him their claims against the said A. B., with vouchers duly verified, on or before a day to be specified in said advertisement or notice, not less than thirty days from the last publication thereof, which said advertisement or notice shall be published once in each week for six successive weeks in the _____ and _____ newspapers hereby designated as most likely to give notice to the persons to be served, [and where the creditors reside out of the state, add:] and also once a week for six successive weeks in the _____, the official newspaper of this state.

County Judge.

300. Notice to Creditors.

In pursuance of an order of Hon. _____, of _____ county, notice is hereby given to all persons having claims against _____ [assignors], lately doing business in the city of _____, under the firm name of _____, to present the same, with the vouchers thereof duly verified, to the subscriber, who has been duly appointed assignee of said _____, for the benefit of creditors, at his office, No. _____ street, in the city of _____, on or before the _____ day of _____,

Dated, _____, _____ day of _____.

Assignee.

301. Proof of Debt.

STATE OF _____ }
County of _____, ss.

_____, being duly sworn, doth depose and say: That he is _____; that the annexed statement of the account of _____, lately doing business at _____, in the

state of _____, is just, true and correct; that there is now due _____, the sum of _____ dollars; that no part thereof has been paid or satisfied, and that there are no set-offs or counterclaims thereto to the knowledge or belief of deponent. Sworn to before me, this _____ day of _____, _____.

302. Petition by Assignee for Final Accounting.

[Title as in Form 298.]

To the Hon. _____:

The petition of the above-named assignee respectfully shows:

I. That on the _____ day of _____, A. D. _____, A. B., residing in the city of _____, county of _____, state of _____, at No. _____ street, executed in due form a general assignment for the benefit of creditors, and that the petitioner duly accepted said assignment and trust.

II. That said assignment was recorded in the office of the clerk of the county of _____, on the day of its execution, and petitioner duly qualified as such assignee and entered upon the execution of his trust.

III. That the inventory and schedules, as required by law, were made and filed by your petitioner on the _____ day of _____, _____, in the office of the clerk of the county of _____; and that thereafter petitioner gave a bond as such assignee in the form, for the sum, and approved as required by statute.

IV. That upon the prayer of this petitioner, an order was made by Hon. _____, one of the judges of this court, on the _____ day of _____, _____, authorizing the petitioner to advertise for creditors to present their claims to him against said assignor on or before a day to be therein specified; that said notice was published as provided by said order, and that a copy thereof was duly mailed to each creditor whose name appears on the books of the assignor, postage prepaid, at least thirty days before the day specified in said advertisement or notice, as appears by the affidavit of said mailing hereunto annexed.

V. That the time within which claims were to be presented to petitioner as specified in said notice, expired on the _____ day of _____, _____; and that creditors, exceeding twenty-five in number, have presented claims against the assignor to your petitioner, and are interested in the trust funds in the hands of petitioner by virtue of the assignment.

VI. That the names and addresses of creditors who have presented claims are as follows: [*Here insert them.*]

And your petitioner therefore prays that a citation may issue out of, and under the seal of, this court, to all persons interested in said estate, requiring them to appear in court upon some day to be specified therein, and to show cause why a settlement of the account of the assignee, your petitioner, should not be had, and, if no cause be shown, to attend the settlement of said account.

[Verification.]

303. Order for Citation for Same.

At a _____ term of the _____ court, held at _____ in the city of _____, on the _____ day of _____, _____.

Present.—Hon. _____, Judge.

[Title.]

On reading and filing the verified petition of the above-named assignee [*or, of _____, a creditor of said assignor*], dated the _____ day of _____, _____, and on motion of _____, attorney for said assignee [*or, creditor*]:

IT IS ORDERED that a citation issue herein to all parties interested in the

estate assigned by A. B. to the above-named assignee by a general assignment for the benefit of creditors, dated the day of , , and recorded in the office of the clerk of the county of , to appear in court on a day therein to be specified, and to show cause why a settlement of the account of the proceedings of the assignee should not be had, and, if no cause be shown, to attend the settlement of such account.

[When more than twenty-five creditors have proved claims, add:] It is FURTHER ORDERED that said citation be served on each creditor who has proved his claim, by depositing a copy of the same, at least thirty days prior to the return day thereof, in the post-office at the place where the assignee resides, duly inclosed and directed to each of such creditors, at his last known post-office address, with the postage prepaid; and by publishing such citation once a week, for at least four weeks prior to such return day, in the , a newspaper published in the county of .

304. Assignee's Account.

[Title same as in Form No. 298.]

To the court, county of :

I, Y. Z., of , do render the following account of my proceedings as assignee of A. B.:

On the day of , , the said A. B., then residing or carrying on business at , made and executed in due form of law, a general assignment of his property and estate, to me, in trust for the benefit of his creditors, which said assignment was, on the day of , , duly recorded in the office of the clerk of the county of . I accepted said assignment and entered upon the execution of the trust thereunder, and took possession of the said assigned property.

On the day of , , an inventory of the said assigned property, and a schedule of creditors, as required by law, was made and delivered by said A. B. [or, by me], and was on said day duly filed in the office of the clerk of the county of , by which it appears that the debts and liabilities of the above-named A. B. amount to the sum of dollars, and his nominal assets to the sum of dollars, and that the actual value of the same was dollars.

Schedule "A," hereto annexed, contains a statement of all the property contained in said inventory, sold by me at public or private sale, with the prices and manner of sale; which sales were fairly made by me at the best prices that could then be had, with due diligence, as I then believed; it also contains a statement of all the debts due the said estate, and mentioned in said inventory, which have been collected, and also of all interest moneys received by me, for which I am legally accountable.

Schedule "B," hereto annexed, contains a statement of all property belonging to the estate which has come into my hands not included in the said inventory.

Schedule "C," hereto annexed, contains a statement of all debts in said inventory mentioned, not collected or collectible by me, together with the reasons why the same have not been collected and are not collectible, and also a statement of any property mentioned in said inventory unsold, and the reasons of the same being unsold. No other assets than those in said inventory, or herein set forth, have come to my possession or knowledge, and all the increase or decrease in the value of any assets of said estate is allowed or charged in said schedules "A" and "B."

Schedule "D," hereto annexed, contains a statement of all moneys paid by me for all necessary expenses for said estate, together with the reasons and object of such expenditure.

On the _____ day of _____, _____, an order was duly made by Hon. _____, _____, authorizing the publication of a notice to creditors to present claims, and such notice was duly published as required by said order and a copy of said notice was duly mailed to each of the creditors whose names appear in the books of the assignor, as required by the rules of this court, as will appear by the order, notice, and due proof of publication and mailing herewith filed.

Schedule "E," hereto annexed, contains a statement of all the names of creditors presented to me in pursuance of said notice, together with the names of the claimants, the general nature of the claim, with the amount and date thereof, and also a statement of all moneys paid by me on account of said claims, with the names and the time of such payment.

Schedule "F," hereto annexed, contains a statement of all other facts affecting my administration of said insolvent's estate, my rights, and those of others interested therein.

I charge myself:

| | |
|---|-------|
| Amount as per inventory | \$ |
| Increase as shown by Schedule "A" | \$ |
| Property not included in inventory, as per Schedule "B".... | \$ |
| | <hr/> |
| Total | \$ |

I credit myself:

| | |
|---|-------|
| Amount of debts not collected, as per Schedule "C"..... | \$ |
| Amount of Schedule "D" | \$ |
| Amount of Schedule "E" | \$ |
| | <hr/> |
| Total | \$ |

Leaving a balance of..... \$

To be distributed according to the provisions of said assignment, subject to the deduction of the amount of my commissions and the expenses of the accounting.

The said several schedules, which are signed by me, are part of this account.

Dated, _____, _____, _____, Assignee.

305. Assignee's Oath.

County of _____, ss.:

I, C. D., being duly sworn, say, that the charges made in the foregoing account of proceedings and schedules annexed, for moneys paid by me to creditors, and for necessary expenses, are correct; that I have been charged therein all the interest for moneys received by me and embraced in said account, for which I am legally accountable; that the moneys stated in said account as collected, were all that were collectible, according to the best of my knowledge, information, and belief, on the debts stated in this account at the time of this settlement thereof; that the allowances in said account for the decrease in the value of any assets, and the charges therein for the increase in such value, are correctly made, and that I do not know of any error in said account, or anything omitted therefrom, which may in anywise prejudice the rights of any party interested in said estate. And deponent further says, that the sums under twenty dollars, charged in the said account, for which no vouchers or

other evidences of payment are produced, or for which he may not be able to produce vouchers or other evidences of payment, have actually been paid and disbursed by him as charged.

Sworn to before me, this
day of , .

306. Citation for Accounting.

THE PEOPLE OF THE STATE OF , to all persons interested in the estate of A. B., assigned to , for the benefit of creditors, send GREETING:

You and each of you are hereby cited and required personally to be and appear at a special term of the court of , to be held in the county courthouse, on the day of , , at ten o'clock, a. m., there and then to show cause why a final settlement of the accounts of , assignee, of above-named A. B., insolvent debtor, should not be had, and, if no cause be shown, then to attend a final settlement of the assignee's accounts.

IN TESTIMONY WHEREOF, I have hereunto caused the seal of the said court of the county of , to be hereunto affixed.

WITNESS Hon. , judge of the said court, this day of ,

[SEAL.]

Clerk.

Attorney for Assignee.

307. Order of Reference.

At a term of, etc.

[Title as in Form No. 303.]

Y. Z., assignee for the benefit of creditors of A. B., under a general assignment, made on the day of , , and recorded in the office of the clerk of the county of , having made and filed an account of his proceedings as such assignee, filed herein on the day of , , and a citation having been issued out of and under the seal of this court to all persons interested in said assigned estate to attend the final settlement of said account.

Now, on the said account and the petition of said Y. Z., filed herein, on the day of , , and the papers accompanying the same, and on said citation and proof of the due service of the same [and on the objections to said account filed by], and on application of , attorney for said assignee [with appearance for other parties];

IT IS ORDERED, that it be referred to R. S., counselor-at-law, to take and state the accounts of the said Y. Z., of his proceedings as assignee of the said assigned estate, with authority to the said R. S., to examine the parties and witnesses on oath in relation to the said assignment and accounting, and all matters connected therewith.

AND IT IS FURTHER ORDERED, that the said referee take proofs and report as to what persons are entitled to share in the distribution of said assigned estate, and in what priority and proportion.

AND IT IS FURTHER ORDERED, that any party to this proceeding, and any creditor, may object to any claim presented before said referee, and that the said referee shall thereupon take the proofs and report as to the validity of such contested claims.

AND IT IS FURTHER ORDERED, that the said reference proceed at , and that days' notice of the time and place of the first hearing be given to all creditors who have presented their claims to the said assignee, or who have appeared upon the return of the said citation.

308. Referee's Report.

Court of _____,
 For the county of _____.

[Title as in Form 298]

To the Hon. the _____ court, in the county of _____ :

I, R. S., referee appointed herein, by order dated _____, to take and state the accounts of the above-named assignee, do respectfully report that, having taken and subscribed the oath required of a referee, I proceeded to take proofs, and from the evidence before me, which is hereto annexed and forms part of this report, I find the following:

I. That prior to the _____ day of _____, the above-named _____ engaged in business in the city of _____, under the _____ name of _____ and that the said _____ then resided in _____.

II. That on the said last-mentioned date, he executed and acknowledged an instrument in writing, assigning all his property to the above-named Y. Z., in trust for the benefit of the creditors of the said assignor. That the following preferences were created in and by said assignment, viz.: [*here specify the preferences.*]

III. That the said assignee joined in the execution and acknowledgment of said assignment and accepted said trust. That said assignment was acknowledged by _____, on _____, and was recorded in the office of the clerk of the county of _____, on the _____ day of _____.

IV. That schedules of the assigned estate, and of the liabilities of the assignors, duly verified by _____, on _____, were filed in the office of the clerk of this court, on the _____ day of _____, showing the liabilities of the assignor to be \$ _____, with \$ _____ nominal assets, and \$ _____ actual assets; and on the _____ day of _____, Hon. _____, one of the judges of this court, ordered the assignee to file a bond in the penalty of \$ _____.

V. That on the _____ day of _____, the said assignee presented to the Hon. _____, one of the judges of this court, his bond, with _____, residing at _____, and _____, residing at _____, as sureties, in the penal sum of \$ _____, which bond was, on the said last-named day, approved by the said last-named judge, and was filed on said day in the office of the clerk of the court.

VI. That the said assignee having applied to this court upon petition, verified by him on the _____ day of _____, for an order to advertise for creditors to present their claims, with the vouchers duly verified, an order was thereupon made upon the _____ day of _____, the Hon. _____, presiding, authorizing such advertisement to be made in the _____, and _____ newspapers, published in _____ once in each week for _____ weeks.

VII. That the said advertisement was published as directed in each of said papers, commencing on the _____ day of _____, and the following is a copy of such advertisement: [*insert copy and proof of publication.*]

VIII. That a copy of such advertisement, inclosed in a sealed envelope, on which was indorsed a direction that if the same was not delivered in ten days, it should be returned to _____, and with the proper postage prepaid thereon, was deposited in the post-office in _____, directed to the sureties on the assignee's said bond, and to each of the creditors whose names appear on the books of the said assignors. That the following and no others of said notices have been returned to the postmaster, viz.: those addressed to _____. [*Here insert proof of mailing.*]

IX. That the following persons have presented claims duly verified to the assignee, viz.:

| Name. | Address. | Amount. | Due. | For. |
|-------|----------|---------|------|------|
| | | | | |

X. That on the day of , , the said assignee presented to this court on account of his proceedings as assignee, verified by his oath thereto, made on the day of , , stating his account, as follows, viz.:

| | |
|-----------------------------|----|
| <i>Dr.</i> | |
| Inventory of stock | \$ |
| Inventory of accounts | \$ |
| Increase by | \$ |
| <i>Cr.</i> | |
| Decrease | \$ |
| Expenses | \$ |
| Dividends paid to | \$ |
| Balance | \$ |

XI. That upon petition of the said assignee, verified by him on the day of , 18 , this court, by order made by Hon. , one of the judges thereof, directed a citation to issue to all persons interested, requiring them to appear in this court, and attend the final settlement of the accounts of said assignee. That such citation was thereupon issued out of and under the seal of this court, returnable of the day of , . That by order of this court duly made on the day of , , the said citation was ordered served by publication in .

XII. That said citation was duly served in the following manner upon .

XIII. That on the return of said citation the following parties and none other appeared in this court:

[*Insert names.*]

XIV. That the following objections to said accounts were filed by the following parties:

[*Insert objections.*]

XV. That by order made by the Hon. , on the day of , , this court referred the said account to me to take and state the same.

XVI. That I issued a summons to attend the reference before me at my office, No. , street, on the day of , , at o'clock. That said notice was duly served on .

XVII. That the following named persons appeared before me on said reference in person [*insert names*], and the following by counsel, viz.: [*insert names.*]

XVIII. That the said assignee, immediately after the approval and filing of this bond, entered upon his duties as such assignee; that he reduced to possession the assigned estate, consisting of ; that he sold , realizing

therefrom \$; that he collected \$; that he paid out and expended for \$; that he has faithfully performed the duties of his said trust; that he is entitled for his commissions to five (5) per centum on \$, equaling the sum of \$; that he should be allowed the following expenditures as necessary in the execution of said trust, viz.: [insert], and that his accounts should be stated, and I do hereby state them as follows, viz.:

| <i>Dr.</i> | |
|---------------------------------|----|
| To inventory of stock | \$ |
| To inventory of accounts | |
| To increase (Schedule A) | |
| Total | \$ |
| <i>Cr.</i> | |
| By decrease of stock | \$ |
| By decrease of accounts | |
| Expenses | |
| Commissions | |
| Payments to creditors, viz..... | |
| | \$ |
| | |

309. Final Decree.

At a Term, etc.

[Title of proceedings as in No. 303.]

A general assignment having been made by A. B. to Y. Z., for the benefit of creditors, dated the day of , and recorded in the office of the clerk of the county of , on the day of , and the said Y. Z. having accepted the trust thereby created, and having, on the day of , filed his bond, duly approved, for the faithful discharge of his duties, as such assignee, and having thereafter duly advertised for creditors to present to him their claims, duly verified, against said A. B., and the time for the presentation of the same having expired, and the said Y. Z. having appeared and presented his account as such assignee to this court, and a citation, dated on the day of , having been duly issued herein to all persons interested in said assigned estate to attend the settlement of the said accounts, returnable on the day of , and proof of the due service of said citation upon [here recite services and appearances], [and objections having been presented to said account by], and it having been referred to R. S., Esq., counselor-at-law, to take and state said account [reciting provisions of order of reference], and the said referee having made and filed his report on the day of , , and due notice of the filing of said report having been given to , and exceptions thereto having been filed by .

Now, upon reading all the papers and proceedings hereinbefore recited, the said report and the testimony, exhibits and vouchers thereto annexed, and the objections to said report filed by the said , and after hearing , of counsel, in behalf of , and [recite appearances], and due consideration thereupon having been had,

IT IS ORDERED, ADJUDGED, AND DECREED:

First: That the said report be and the same is hereby in all respects confirmed, and the account of said C. D., assignee as aforesaid, audited and allowed as therein stated.

Second: That out of the funds in the hands of the said Y. Z., assignee of the said estate of A. B., the said Y. Z. retain dollars as and for his lawful commissions as such assignee; that he pay to , the attorney for said assignee, the sum of dollars, for his costs and allowances in this proceeding, and the further sum of dollars to , referee aforesaid, for his fees as such referee; and out of the rest and residue of said funds remaining in the hands of said assignee, after deducting the costs and expenses aforesaid, said assignee is directed to make payment between the following named creditors, preferred in said assignment, the amounts of their several preferences being the amounts set opposite their names, respectively, as follows: in full; and out of the rest and residue of said funds remaining in the hands of said assignee, said assignee is directed to make payment between the following named creditors, whose several claims are settled and adjusted at the sums set opposite their names, respectively.

[Here insert names of creditors, and amounts due them.]

Third: That the said assignee do take good and sufficient vouchers for each and every payment so made; and if, after reasonable diligence, any of the persons so entitled to share in said distribution cannot be found, or shall decline or neglect to accept their said share, then the share so belonging to such person shall be deposited in the Trust Company to the credit of such persons.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that upon compliance with the foregoing provisions, the said assignee shall, upon presenting due proof of the same to this court, be entitled to an order relieving him of his liability as such assignee, and releasing the sureties upon the said bond filed by the said Y. Z., as assignee of said estate, from all liability upon matters included in the aforesaid accounting, to all creditors who have appeared, and to such creditors as have not appeared after due citation, and to such creditors as have not presented their claims after due advertisement; and that the said application may be made without further notice.

Judge.

CHAPTER X.

AUCTIONS.

SALES by auction are usually regulated by statute, requiring auctioneers to obtain licenses, or give bonds, or both, and to render an account to the state.

For particulars of these regulations, the reader must consult the statutes of the several states. As to the provisions for New York state, see General Business Law, §§ 20-24, and Penal Law, § 943; Birdseye, C. & G. Cons. Laws. pp. 1806-1808, 3909.

The forms of a bond and of the terms of sale, etc., given below, are under the laws of the state of New York.

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310. Bond of Auctioneer.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., C. D., and E. F., of _____, are held and firmly bound, jointly and severally, to the city of _____, in the penal sum of _____ dollars, lawful money of the United States, to be paid to the said city of _____, its successors or assigns, for which payment well and truly to be made, we, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the _____ day of _____.

WHEREAS, the said A. B. has applied to _____ for a license to engage in and carry on the business and occupation of an auctioneer, and the said _____ has, previous to the granting of the same, required the filing of this bond pursuant to statute;

NOW, THEREFORE, the condition of the above obligation is such that if the said A. B. and his copartners, and his and their clerks, agents, and servants, shall well and truly carry on his said business of auctioneer, and in all things obey and conform to all the laws of the state of New York, and all ordinances and resolutions of the common council of the said city of _____ now in force, or hereafter to be adopted, relating especially to the business of auctioneer in the said, the city of _____, then this obligation to be void; otherwise, to remain in full force and effect.

Sealed and delivered in the presence of _____ A. B. [SEAL.]

C. D. [SEAL.]

[Acknowledgment.]

E. F. [SEAL.]

I approve of the foregoing bond, on this _____ day of _____, _____.

Justification as follows:

STATE OF _____ }
 City of _____, } ss.
 County of _____, }

_____, one of the obligors in the foregoing bond, being duly sworn, says that he is a freeholder, and resides at _____, in the city of _____; that he is worth the sum of _____ dollars over and above all his just debts and liabilities, and property exempt from levy and sale on execution, and that his property consists in part of _____, which is worth the sum of _____ dollars, and that the same is free and clear of all liens and incumbrances of every kind, except _____, and the said property is owned by him in his own sole name, right, and title, and is in his individual name of record.

Sworn to before me, this _____ [Signature.]

day of _____, _____.

311. Certificate of Comptroller.

OFFICE OF THE COMPTROLLER OF THE STATE OF _____.

I HEREBY CERTIFY, that on the _____ day of _____, I approved a bond for A. B., as auctioneer, within the city of _____ [or, within the county of _____], and that the sureties upon the said bond were C. D. and E. F., and that the said A. B. is entitled to act as an auctioneer, with the rights, duties, and powers in such case made and provided.

Dated, _____, _____.

R. S.,

Comptroller of the state of _____.

312. Terms of Sale of Real Property.

The premises described in the annexed diagram [*or otherwise identify them*] will be sold [*if by an officer under order of court, add, under the direction of A. B., describing official character*], upon the following terms:

First: Ten per cent. of the purchase money of said premises will be required to be paid to the auctioneer [*or, to said A. B.*], at the time and place of sale, and for which his [*or, the owner's*] receipt will be given.

Second: The residue of said purchase money will be required to be paid to the said , at his office at , on the day of , 18 , when the said owner's [*or, officer's*] deed will be ready for delivery.

Third: The vendor is not required to send any notice to the purchaser; and if he neglects to call at the time and place above specified, to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the vendor shall deem it proper to extend the time for the completion of said purchase.

Fourth: All taxes, assessments, and other incumbrances, which at the time of sale are liens or incumbrances upon said premises, will be allowed out of the purchase money; provided, the purchaser shall, previously to the delivery of the deed, produce to the proof of such liens, and duplicate receipts for the payment thereof, and the existence of any unpaid tax or assessment shall not be deemed an objection to the title, provided the amount thereof is so allowed.

Fifth: The purchaser of said premises, or any portion thereof, will, at the time and place of sale, sign a memorandum of his purchase, and pay, in addition to the purchase money, the auctioneer's fee of ten dollars, for each parcel separately sold [*and the referee's fee of two dollars for a deed*].

Sixth: The biddings will be kept open after the property is struck down, and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale [*under the direction of the said A. B.*], under these same terms of sale [*without application to the court, unless the plaintiff's attorney shall elect to make such application*]; and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale, and that for which they may be purchased on the resale, and also any costs or expenses occurring on such resale.

Seventh: It is understood and agreed that the auctioneer is not responsible for any interest on the ten per cent. deposited under these terms of sale.

[*If the property is to be sold subject to any incumbrances, right of dower, etc., state the same.*]

[*Date.*]

313. Memorandum of Sale.

THIS MAY CERTIFY, that I have this day of , purchased the premises described in the above-annexed diagram, for the sum of dollars, and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth.

[*Date.*]

[*Signature of purchaser.*]

[*Date.*]

RECEIVED from [*naming purchaser*], the sum of dollars, being ten per cent. on the amount bid by him, for property sold by me under the judgment in the above-entitled action.

[*Signature of auctioneer or officer.*]

CHAPTER XI.

BANKRUPTCY.

NOTE.— Oaths required by the act, except upon hearings in court, may be administered by referees and by officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the state where the same are to be taken. Bankrupt Act of 1898, c. 4, § 20.

The following forms were adopted by the rules of the U. S. Supreme Court on November 28, 1898, to take effect January 2, 1899, in accordance with section 30 of the Bankruptcy Law. They are numbered consecutively in the rules, and these numbers are retained herein, in addition to the numbers given in regular order in this book.

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314. Debtor's Petition. [Form No. 1.]

To the Hon.

Judge of the District Court of the United States for the district
of

The petition of , of , in the county of , and district and state of , [*state occupation*], respectfully represents:

That he has had his principal place of business [*or, has resided, or, has had his domicile*] for the greater portion of six months next immediately preceding the filing of this petition, at , within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the acts of congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore, your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

Attorney.

United States of America, District of , ss.

I, , the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

Petitioner.

Subscribed and sworn to before me, this day of , A. D. .

[*Official character.*]

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

| Claims which have priority. | Reference to ledger or voucher. | Names of creditors. | Residence (if unknown, that fact must be stated). | Where and when contracted. | Nature and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom. | Amount. |
|--|---------------------------------|---------------------|---|----------------------------|--|---------|
| | | | | | | \$ |
| | | | | | | c. |
| (1.) Taxes and debts due and owing to the United States. | | | | | | |
| (2.) Taxes due and owing to the State, or to any county, district or municipality thereof. | | | | | | |
| (3.) Wages due workmen, clerks, or servants to an amount not exceeding \$300 each, earned within three months before filing the petition. | | | | | | |
| (4.) Other debts having priority by law. | | | | | | |
| | | | | | Total | |

Petitioner.

SCHEDULE A. (2)

Creditors holding securities.

[N. B. — Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.]

| Reference to ledger or voucher. | Names of creditors. | Residences (if unknown, that fact must be stated). | Description of securities. | When and where debts were contracted. | Value of securities. | Amount of debts. |
|---------------------------------|---------------------|--|----------------------------|---------------------------------------|----------------------|------------------|
| | | | | | \$ c. | \$ c. |
| | | | | | | |
| | | | | Total | | |

Petitioner.

SCHEDULE A. (3)

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

| Reference to ledger or voucher. | Names of creditors. | Residence (if unknown that fact must be stated). | When and where contracted. | Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom. | Amount. |
|---------------------------------|---------------------|--|----------------------------|--|---------|
| | | | | | \$ |
| | | | | | c. |
| | | | | Total | |

Petitioner.

SCHEDULE A. (4)

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

| Reference to ledger or voucher. | Names of holders as far as known. | Residence (if unknown, that fact must be stated). | Place where contracted. | Nature of liability. whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom. | Amount. |
|---------------------------------|-----------------------------------|---|-------------------------|---|---------|
| | | | | | \$ |
| | | | | | |
| | | | | Total | |

Petitioner.

SCHEDULE A. (5)

Accommodation paper.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

| Reference to ledger or voucher. | Names of holders. | Residences (if unknown, that fact must be stated). | Names and residence of persons accommodated. | Place where contracted. | Whether liability was contracted as partner or joint contractor, or with any other person, and, if so, with whom. | Amount. | |
|---------------------------------|-------------------|--|--|-------------------------|---|---------|---|
| | | | | | | \$ | c |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | Total | | |

Petitioner.

OATH TO SCHEDULE A.

United States of America, District of ss.:

On this day of , A. D. 18 , before me personally came , the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of congress relating to bankruptcy.

Subscribed and sworn to before me,
this day of , A. D. 18 .

[*Official character.*]

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B. (1)

Real estate.

| Location and description of all real estate owned by debtor, or held by him. | Incumbrances thereon, if any, and dates thereof. | Statement of particulars relating thereto. | Estimated value. |
|--|--|--|------------------|
| | | | \$ |
| | | | c. |
| | | Total | |

Petitioner.

SCHEDULE B. (2)

Personal property

| | \$ | c. |
|---|----|----|
| a.—Cash on hand | | |
| b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately) | | |
| c.—Stock in trade, in business of, at, of the value of | | |
| d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz. | | |
| e.—Books, prints, and pictures, viz. | | |
| f.—Horses, cows, sheep, and other animals (with number of each), viz. | | |
| g.—Carriages and other vehicles, viz. | | |
| h.—Farming stock and implements of husbandry, viz. | | |
| i.—Shipping, and shares in vessels, viz. | | |
| k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz. | | |
| l.—Patents, copyrights, and trade-marks, viz. | | |
| m.—Goods or personal property of any other description, with the place where each is situated, viz. | | |
| Total | | |

Petitioner.

SCHEDULE B. (3)
Choses in action.

| | Dollars. | Cents. |
|--|----------|--------|
| a.—Debts due petitioner on open account..... | | |
| b.—Stocks in incorporated companies, interest in joint-stock companies, and negotiable bonds | | |
| c.—Policies of insurance..... | | |
| d.—Unliquidated claims of every nature, with their estimated value..... | | |
| e.—Deposits of money in banking institutions and elsewhere | | |
| Total..... | | |

Petitioner.

SCHEDULE B. (4)

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

| General interest. | Particular description. | Supposed value of my interest. | |
|--|-------------------------|---|----|
| | | \$ | c. |
| Interest in land..... | | | |
| Personal property..... | | | |
| Property in money, stock, shares, bonds, annuities, etc. | | | |
| Rights and powers, legacies and bequests | | | |
| <i>Property heretofore conveyed for benefit of creditors.</i> | | | |
| What portion of debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor | Total..... | Amount realized from proceeds of property conveyed. | |
| What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy | Total..... | \$ | c. |

Petitioner.

SCHEDULE B. (5)

A particular statement of the property claimed as exempted from the operation of the acts of congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

| | | | | | |
|---|---|----|---|------------|--|
| <p>Military uniform, arms, and equipments.....</p> <p>Property claimed to be exempted by state laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the state creating the exemption</p> | <p>Valuation.</p> <table border="1"> <tr> <td data-bbox="533 226 595 319">\$</td> <td data-bbox="533 159 595 226">c</td> </tr> <tr> <td colspan="2" data-bbox="751 327 782 453" style="text-align: right;">Total.....</td> </tr> </table> | \$ | c | Total..... | |
| \$ | c | | | | |
| Total..... | | | | | |

Petitioner.

SCHEDULE B. (6)

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.

Deeds.

Papers.

| | |
|--|--|
| | |
| | |
| | |

Petitioner.

OATH OF SCHEDULE B.

United States of America, District of _____, ss.

On this _____ day of _____, A. D. _____, before me personally came _____, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of congress relating to bankruptcy.

[Official character.]

SUMMARY OF DEBTS AND ASSETS.

[From the statements of the bankrupt in Schedules A and B.]

| | | | | | |
|----------------|-----|---|--|--|--|
| Schedule A.... | 1 | (1) Taxes and debts due United States. | | | |
| " ".... | 1 | (2) Taxes due states, counties, districts, and municipal- palities | | | |
| " ".... | 1 | (3) Wages. | | | |
| " ".... | 1 | (4) Other debts preferred by law | | | |
| Schedule A.... | 2 | Secured claims.... | | | |
| Schedule A.... | 3 | Unsecured claims | | | |
| Schedule A.... | 4 | Notes and bills which ought to be paid by other parties thereto.... | | | |
| Schedule A.... | 5 | Accommodation paper..... | | | |
| | | Schedule A, total | | | |
| Schedule B ... | 1 | Real estate | | | |
| Schedule B.... | 2-a | Cash on hand | | | |
| " ".... | 2-b | Bills, promissory notes, and securities | | | |
| " ".... | 2-c | Stock in trade | | | |
| " ".... | 2-d | Household goods, etc. | | | |
| " ".... | 2-e | Books, prints, and pictures | | | |
| " ".... | 2-f | Horses, cows, and other animals..... | | | |
| " ".... | 2-g | Carriages and other vehicles..... | | | |
| " ".... | 2-h | Farming stock and implements | | | |
| " ".... | 2-i | Shipping and shares in vessels | | | |
| " ".... | 2-k | Machinery, tools, etc. | | | |
| " ".... | 2-l | Patents, copyrights, and trade-marks | | | |
| " ".... | 2-m | Other personal property | | | |
| Schedule B ... | 3-a | Debts due on open accounts..... | | | |
| " ".... | 3-b | Stocks, negotiable bonds, etc. | | | |
| " ".... | 3-c | Policies of insurance..... | | | |
| " ".... | 3-d | Unliquidated claims | | | |
| " ".... | 3-e | Deposits of money in banks and elsewhere..... | | | |
| Schedule B.... | 4 | Property in reversion, remainder, trust, etc..... | | | |
| Schedule B.... | 5 | Property claimed to be excepted | | | |
| Schedule B.... | 6 | Books, deeds, and papers | | | |
| | | Schedule B, total..... | | | |

315. Partnership Petition. [Form No. 2.]

To the Hon. _____,

Judge of the District Court of the United States for the _____ District
of _____,

The petition of _____ respectfully represents:

That your petitioners and _____ have been partners under the firm name of _____, having their principal place of business at _____, in the county of _____, and district and state of _____, for the greater portion of the six months next immediately preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by _____ oath, contains a full and true statement of all the debts of said partners, and, as far as possible, the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, verified by _____ oath, contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said _____ further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual

debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked D, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said further states that the schedule hereto annexed, marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said further states that the schedule hereto annexed, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed, marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore, your petitioners pray that the said firm may be adjudged by a decree of the court to be bankrupts within the purview of said acts.

Attorney .

Petitioners.

, the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

Subscribed and sworn to before me,
this day of , A. D. .

Petitioners.

[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1, No. 314 *ante.*]

316. Creditor's Petition. [Form No. 3.]

To the Hon. , judge of the District Court of the United States for the district of :

The petition of , of , and , of , and , of , respectfully shows:

That . of , has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business [or, resided, or, had his domicile] at , in the county of , and state and district aforesaid, and owes debts to the amount of \$1,000.

That your petitioners are creditors of said , having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of \$500. That the nature and amount of your petitioners' claims are as follows:

And your petitioners further represent that said is insolvent, and that within four months next preceding the date of this petition the said committed an act of bankruptcy, in that he did heretofore, to-wit, on the day of

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made upon , as provided in the acts of congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

Attorney.

Petitioners.

United States of America, District of , ss.

, being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, , this day of ,

[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1, No. 314 *ante.*]

317. Order to Show Cause upon Creditor's Petition. [Form No. 4.]

In the District Court of the United States for the District of .

In the Matter of

} *In Bankruptcy.*

Upon consideration of the petition of , that be declared a bankrupt, it is ordered that the said do appear at this court, as a court of bankruptcy, to be holden at , in the district aforesaid, on the day of , at o'clock in the noon, and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered, that a copy of said petition, together with a writ of subpoena, be served on said , by delivering the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days before the day aforesaid.

WITNESS the Hon. , judge of the said court, and the seal thereof, at , in said district, on the day of , A. D. .

[SEAL OF THE COURT.]

Clerk.

318. Subpoena to Alleged Bankrupt. [Form No. 5.]

United States of America, District of .

To , in said district, greeting:

For certain causes offered before the district court of the United States of America, within and for the district of , as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally appear before our said district court to be holden at , in said district, on the day of , A. D. , to answer to a petition filed by in our said court, praying that

you may be adjudged a bankrupt; and to do further and receive that which our said district court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

WITNESS the Hon. _____, judge of said court, and the seal thereof, at _____, this _____ day of _____, A. D. _____.

[SEAL OF THE COURT.]

Clerk.

319. Denial of Bankruptcy. [Form No. 6.]

In the District Court of the United States for the _____ District of _____.

| | | |
|------------------------|---|-----------------------|
| In the Matter of _____ | } | <i>In Bankruptcy.</i> |
|------------------------|---|-----------------------|

At _____, in said district, on the _____ day of _____, A. D. _____.

And now, the said _____ appears, and denies that he has committed the act of bankruptcy set forth in said petition, or that he is insolvent, and avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the court [*or, he demands that the same may be inquired of by a jury.*]

Subscribed and sworn to before me,
this _____ day of _____, A. D. _____.

[*Official character.*]

320. Order for Jury Trial. [Form No. 7.]

In the District Court of the United States for the _____ District of _____.

| | | |
|------------------------|---|-----------------------|
| In the Matter of _____ | } | <i>In Bankruptcy.</i> |
|------------------------|---|-----------------------|

At _____, in said district, on the _____ day of _____, _____.

Upon the demand in writing, filed by _____, alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy, and the fact of his insolvency may be inquired of by a jury, it is ordered, that said issue be submitted to a jury.

[SEAL OF THE COURT.]

Clerk.

321. Special Warrant to Marshal. [Form No. 8.]

In the District Court of the United States for the _____ District of _____.

| | | |
|------------------------|---|-----------------------|
| In the Matter of _____ | } | <i>In Bankruptcy.</i> |
|------------------------|---|-----------------------|

To the marshal of said district, or to either of his deputies, greeting:

Whereas, a petition for adjudication of bankruptcy was, on the _____ day of _____, A. D. _____, filed against _____, of the county of _____, and state of _____, in said district, and said petition is still pending; and whereas, it satisfactorily appears that said _____ has committed an act of bankruptcy [*or, has neglected, or, is neglecting, or, is about to so neglect his property that it has thereby deteriorated, or, is thereby deteriorating, or, is about thereby to deteriorate in value*], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said _____, and of all

his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the court.

WITNESS the Hon. _____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ of _____, A. D. _____.

[SEAL OF THE COURT.] Clerk.

322. Return by Marshal Thereon.

By virtue of the within warrant, I have taken possession of the estate of the within-named _____, and of all his deeds, books of account, and papers which have come to my knowledge.

Marshal [or Deputy Marshal.]

Fees and expenses.

| | | |
|--|--|--|
| 1. Service of warrant | | |
| 2. Necessary travel, at the rate of six cents a mile each way..... | | |
| 3. Actual expenses in custody of property and other services as follows. | | |
| [Here state the particulars.] | | |

Marshal [or Deputy Marshal.]

District of _____, A. D. _____.

Personally appeared before me, the said _____, and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

Referee in Bankruptcy.

323. Bond of Petitioning Creditor. [Form No. 9.]

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as principal, and _____, as sureties, are held and firmly bound unto _____, in the full and just sum of _____ dollars, to be paid to the said _____, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed, this _____ day of _____, A. D. _____.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the _____ district of _____, against the said _____, and the said _____ has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said _____, subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said _____ shall indemnify the said _____ for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in presence of

[SEAL.]
[SEAL.]
[SEAL.]

Approved this _____ day of _____, A. D. _____.

District Judge.

324. Bond to Marshal. [Form No. 10.]

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as principal, and _____, as sureties, are held and firmly bound unto _____, marshal of the United States for the _____ district of _____, in the full and just sum of _____ dollars, to be paid to the said _____, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed, this _____ day of _____, A. D. _____.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the _____ district of _____, against the said _____, and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said _____, subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court, upon a petition of said _____, has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said _____, and the said _____, being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of _____

[SEAL.]
[SEAL.]
[SEAL.]

Approved this _____ day of _____, A. D. _____.

District Judge.

325. Adjudication that Debtor is not Bankrupt. [Form No. 11.]

In the District Court of the United States for the _____ District of _____.

| | | |
|------------------------|---|-----------------------|
| In the Matter of _____ | } | <i>In Bankruptcy.</i> |
|------------------------|---|-----------------------|

At _____, in said district, on _____ day of _____, A. D. _____, before the Hon. _____, judge of the _____ district of _____.

This cause came on to be heard at _____, in said court, upon the petition of _____ that _____ be adjudged a bankrupt within the true intent and meaning of the acts of congress relating to bankruptcy, and [*here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had.*].

And thereupon, and upon consideration of the proofs in said cause [*and the arguments of counsel thereon, if any*], it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said _____ was not a bankrupt, and that said petition be dismissed, with costs.

WITNESS the Hon. _____, judge of said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. _____.

[SEAL OF THE COURT.]

Clerk.

326. Adjudication of Bankruptcy. [Form No. 12.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district, on the day of , A. D. , before the Hon. , judge of said court in bankruptcy, the petition of that be adjudged a bankrupt, within the true intent and meaning of the acts of congress relating to bankruptcy, having been heard and duly considered, the said is hereby declared and adjudged bankrupt accordingly.

WITNESS the Hon. , judge of said court, and the seal thereof, at in said district, on the day of , A. D. .

[SEAL OF THE COURT.]

Clerk.

327. Appointment, Oath, and Report of Appraisers. [Form No. 13.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

It is ordered that , of , of , and , of , three disinterested persons, be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

WITNESS my hand this day of , A. D. .

Referee in Bankruptcy.

District of , ss.

Personally appeared the within-named and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

Subscribed and sworn to before me, this day of , A. D., .

[Official character.]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

| | Dollars. | Cents. |
|--|----------|--------|
| | | |

IN WITNESS WHEREOF, we hereunto set our hands, at , this day of , A. D. .

328. Order of Reference. [Form No. 14.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

Whereas, , of , in the county of , and district aforesaid, on the day of , A. D. , was duly adjudged a bankrupt upon a petition filed in this court by [*or, against*] him on the day of , A. D. , according to the provisions of the acts of congress, relating to bankruptcy.

It is thereupon ordered, that said matter be referred to , one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said shall attend before said referee on the day of , at , and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said bankruptcy.

WITNESS the Hon. , judge of the said court, and the seal thereof, at , in said district, on the day of , A. D. .

[SEAL OF THE COURT.] *Clerk.*

329. Order of Reference in Judge's Absence. [Form No. 15.]

In the District Court of the United States for the District of .

| | | |
|------------------|---|-----------------------|
| In the Matter of | } | <i>In Bankruptcy.</i> |
|------------------|---|-----------------------|

Whereas, on the day of , A. D. , a petition was filed to have , of , in the county of and district aforesaid, adjudged a bankrupt according to the provisions of the acts of congress relating to bankruptcy; and, whereas, the judge of said court was absent from said district at the time of filing said petition [*or, in case of involuntary bankruptcy, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors*], it is thereupon ordered that the said matter be referred to , one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said shall attend before said referee on the day of , A. D. , at .

WITNESS my hand and the seal of the said court, at , in said district, on the day of , A. D. .

[SEAL OF THE COURT.] *Clerk.*

330. Referee's Oath of Office. [Form No. 16.]

I, , do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God.

Subscribed and sworn to before me, this day of , A. D., .

District Judge.

331. Bond of Referee. [Form No. 17.]

KNOW ALL MEN BY THESE PRESENTS, that we, _____, of _____, as principal, and _____, of _____, and _____, of _____, as sureties, are held and firmly bound to the United States of America in the sum of _____ dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, A. D. _____.

The condition of this obligation is such that whereas the said _____ has been on the _____ day of _____, A. D. 18____, appointed by the Hon. _____, judge of the district court of the United States for the _____ district of _____, a referee in bankruptcy, in and for the county of _____, in said district, under the acts of congress relating to bankruptcy.

Now, therefore, if the said _____ shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of _____ [SEAL.]
 _____ [SEAL.]
 _____ [SEAL.]

Approved this _____ day of _____, A. D. _____.

District Judge.

332. Notice of First Meeting of Creditors. [Form No. 18.]

In the District Court of the United States for the _____ District of _____. In Bankruptcy.

In the Matter of

 Bankrupt .

} *In Bankruptcy.*

To the creditors of _____, of _____, in the county of _____, and district aforesaid, a bankrupt:

Notice is hereby given that on the _____ day of _____, A. D. _____, the said _____ was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at _____, in _____, on the _____ day of _____, A. D. _____, at o'clock in the _____ noon, at which time the said creditors may attend, prove their claims, appoint a trustee, examine the bankrupt, and transact such other business as may properly come before said meeting.

Referee in Bankruptcy.

333. List of Debts Proved at First Meeting. [Form No. 19.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district, on the day of , A. D. , before , referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

| Names of creditors. | Residence. | Debts proved. | |
|---------------------|------------|---------------|------|
| | | Dolls. | Cts. |
| | | | |

Referee in Bankruptcy.

334. General Letter of Attorney in Fact when Creditor is not Represented by Attorney-at-Law. [Form No. 20.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

To :

I, , of , in the county of , and state of , do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal, the day of , A. D. .

Signed, sealed, and delivered in presence of [SEAL.]

Acknowledged before me, this day of , A. D. .

[Official character.]

335. Special Letter of Attorney in Fact. [Form No. 21.]

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

To :

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at _____, on the _____ day of _____, before _____, or any adjournment thereof, and then and there for _____ and in _____ name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

[SEAL.]

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal, the _____ day of _____, A. D. _____.

Signed, sealed, and delivered in presence of

Acknowledged before me, this _____ day of _____, A. D. _____.

[Official character.]

336. Appointment of Trustee by Creditors. [Form No. 22.]

In the District Court of the United States for the _____ District of _____.

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At _____, in said district, on the _____ day of _____, A. D. _____, before _____, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the [here insert the names of the newspapers in which notice was published], we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint _____, of _____, in the county of _____, and state of _____, to be the trustee of the said bankrupt's estate and effects.

| Signatures of creditors. | Residences of the same. | Amount of debt. | |
|--------------------------|-------------------------|-----------------|------|
| | | Dolls. | Cts. |
| | | | |

Ordered that the above appointment of trustee be, and the same is hereby approved.

Referee in Bankruptcy.

337. Appointment of Trustee by Referee. [Form No. 23.]
 In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district, on the day of , A. D. , before ,
 referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the [here insert the names of the newspapers in which notice was published], I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts, and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustee of said bankrupt's estate, and, therefore, I do hereby appoint , of , in the county of , and state of , as trustee of the same.

Referee in Bankruptcy.

338. Notice to Trustee of his Appointment. [Form No. 24.]
 In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

To , of , in the county of , and district aforesaid:

I hereby notify you that you were duly appointed trustee [or, one of the trustees] of the estate of the above-named bankrupt at the first meeting of the creditors, on the day of , A. D. , and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at , the day of , A. D. .

Referee in Bankruptcy.

339. Bond of Trustee. [Form No. 25.]

KNOW ALL MEN BY THESE PRESENTS, that we, , of , as principal, and , of , and , of , as sureties, are held and firmly bound unto the United States of America in the sum of dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this day of , A. D. .

The condition of this obligation is such, that whereas the above-named was, on the day of , A. D. , appointed trustee in the case pending in bankruptcy in said court, wherein is the bankrupt, and he, the said , has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said _____, trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in presence of

[SEAL.]

[SEAL.]

[SEAL.]

340. Order Approving Trustee's Bond. [Form No. 26.]

At a court of bankruptcy, held in and for the _____ district of _____, at _____, this _____ day of _____, _____.

Before _____, referee in bankruptcy, in the district court of the United States, for the _____ district of _____.

In the Matter of

Bankrupt .

} *In Bankruptcy.*

It appearing to the court, _____, of _____, and in said district, has been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors [or, by order of the court], to wit, in the sum of _____ dollars, it is ordered that the said bond be, and the same is hereby approved.

Referee in Bankruptcy.

341. Order that no Trustee be Appointed. [Form No. 27.]

In the District Court of the United States for the _____ District of _____.

In the Matter of

Bankrupt .

} *In Bankruptcy.*

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

Referee in Bankruptcy.

342. Order for Examination of Bankrupt. [Form No. 28.]

In the District Court of the United States for the _____ District of _____.

In the Matter of

Bankrupt .

} *In Bankruptcy.*

At _____, on the _____ day of _____, A. D. _____.

Upon the application of _____, trustee of said bankrupt [or, creditor of said bankrupt], it is ordered that said bankrupt attend before _____, one of the

referees in bankruptcy of this court, at , on the day of , at o'clock in the noon, to submit to examination under the acts of congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

Referee in Bankruptcy.

343. Examination of Bankrupt or Witness. [Form No. 29.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district, on the day of , A. D. , before , one of the referees in bankruptcy of said court. , of , in the county of , and state of , being duly sworn and examined at the time and place above mentioned, upon his oath says: [*Here insert substance of examination of party.*]

Referee in Bankruptcy.

344. Summons to Witness. [Form No. 30.]

To :

Whereas, , of , in the county of , and state of , has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the district court of the United States for the district of .

These are to require you, to whom this summons is directed, personally to be and appear before , one of the referees in bankruptcy of the said court, at , on the day of , at o'clock in the noon, then and there to be examined in relation to said bankruptcy.

WITNESS the Hon. , judge of said court, and the seal thereof, at this day of , A. D. .

Clerk.

345. Return of Summons to Witness.

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

On this day of , A. D. , before me came , of , in the county of , and state of , and makes oath, and says that he did, on the day of , A. D. , personally serve , of , in the county of , and state of , with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceeding in bankruptcy named in said summons.

Subscribed and sworn to before me, this day of , A. D. .

346. Proof of Unsecured Debt. [Form No. 31.]

In the District Court of the United States for the District of .

| | | |
|---|---|-----------------------|
| <p style="text-align: center;">In the Matter of Bankrupt .</p> | } | <i>In Bankruptcy.</i> |
|---|---|-----------------------|

At , in said district of , on the day of , A. D. , came , of , in the county of , in said district of , and made oath, and says that , the person by [or, against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of dollars; that the consideration of said debt is as follows:

that no part of said debt has been paid [except _____];

that there are no set-offs or counterclaims to the same [except _____];

and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

Creditor.

Subscribed and sworn to before me,
this day of , A. D. .

[Official character.]

347. Proof of Secured Debt. [Form No. 32.]

In the District Court of the United States for the District of .

| | | |
|---|---|-----------------------|
| <p style="text-align: center;">In the Matter of Bankrupt .</p> | } | <i>In Bankruptcy.</i> |
|---|---|-----------------------|

At , in said district of , on the day of , A. D. , came , of , in the county of , in said district of , and made oath, and says that , the person by [or, against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of dollars; that the consideration of said debt is as follows:

that no part of said debt has been paid [except _____];

that there are no set-offs or counterclaims to the same [except _____];

and that the only securities held by this deponent for said debt are the following:

Creditor.

Subscribed and sworn to before me,
this day of , A. D. .

[Official character.]

348. Proof of Debt Due Corporation. [Form No. 33.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district of , on the day of , A. D. , came , of , in the county of , and state of , and made oath and says that he is of the , a corporation incorporated by and under the laws of the state of , and carrying on business at , in the county of , and state of , and that he is duly authorized to make this proof, and says that the said , the person by [or, against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of dollars; that the consideration of said debt is as follows:

that no part of said debt has been paid [except ; that there are no set-offs or counterclaims to the same [except

]; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

of said Corporation.

Subscribed and sworn to before me,
 this day of , A. D. .

[Official character.]

349. Proof of Debt by Partnership. [Form No. 34.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district of , on the day of , A. D. , came , of , in the county of , in said district of , and made oath and says that he is one of the firm of , consisting of himself and , of , in the county of , and state of ; that the said , the person by [or, against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of dollars; that the consideration of said debt is as follows:

that no part of said debt has been paid [except ;

];

that there are no set-offs or counterclaims to the same [except
];
 and this deponent has not, nor has his said firm, nor has any person by their
 order, or to this deponent's knowledge or belief, for their use, had or received
 any manner of security for said debt whatever.

Creditor.

Subscribed and sworn to before me,
 this day of , A. D. .

[Official character.]

350. Proof of Debt by Agent or Attorney. [Form No. 35.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district of , on the day of , A. D. ,
 came , of , in the county of , and state of , attorney
 [or, authorized agent] of , in the county of , and state of ,
 and made oath and says that , the person by [or, against] whom a peti-
 tion for adjudication of bankruptcy has been filed, was at and before the filing
 of said petition, and still is, justly and truly indebted to the said , in
 the sum of dollars; that the consideration of said debt is as follows:

that no part of said debt has been paid [except
];
 and that this deponent has not, nor has any person by his order, or to this
 deponent's knowledge or belief, for his use had or received any manner of se-
 curity for said debt whatever. And this deponent further says, that this depo-
 sition cannot be made by the claimant in person because

and that he is duly authorized by his principal to make this affidavit, and
 that it is within his knowledge that the aforesaid debt was incurred as and
 for the consideration above stated, and that such debt, to the best of his
 knowledge and belief, still remains unpaid and unsatisfied.

Subscribed and sworn to before me,
 this day of , A. D. .

[Official character.]

351. Proof of Secured Debt by Agent. [Form No. 36.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district of , on the day of , A. D. , came , of , in the county of , and state of , attorney [or, authorized agent] of , in the county of , and state of , and made oath, and says that , the person by [or, against] whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said in the sum of dollars; that the consideration of said debt is as follows:

;

that no part of said debt has been paid [except];

that there are no set-offs or counterclaims to the same [except];

and that the only securities held by said for said debt are the following ;

and this deponent further says that this deposition cannot be made by the claimant in person because

, and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

Subscribed and sworn to before me,
 this day of , A. D. .

[Official character.]

352. Affidavit of Lost Bill, or Note. [Form No. 37.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

On this day of , A. D. , at , came , of , in the county of , and state of , and makes oath and says that the bill of exchange [or, note], the particulars whereof are underwritten, has been lost under the following circumstances, to wit,

;

and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said , or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bill [or, note], nor in any manner parted with or assigned the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same.

BILL OR NOTE ABOVE REFERRED TO.

| Date. | Drawer or maker. | Acceptor. | Sum. |
|-------|------------------|-----------|------|
| | | | |

Subscribed and sworn to before me,
 this day of , A. D. .

[*Official character.*]

353. Order Reducing Claim. [Form No. 38.]

In the District Court of the United States for the District of .

| | |
|------------------------------------|-------------------------|
| In the Matter of Bankrupt . | } <i>In Bankruptcy.</i> |
|------------------------------------|-------------------------|

At , in said district, on the day of , A. D. .

Upon the evidence submitted to this court upon the claim of , against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that the amount of said claim be reduced from the sum of , as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of , and that the latter-named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed [*if with interest*, with interest thereon from the day of , A. D.].

Referee in Bankruptcy.

354. Order Expunging Claim. [Form No. 39.]

In the District Court of the United States for the District of .

| | |
|------------------------------------|-------------------------|
| In the Matter of Bankrupt . | } <i>In Bankruptcy.</i> |
|------------------------------------|-------------------------|

At , in said district, on the day of , A. D. .

Upon the evidence submitted to the court upon the claim of , against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.

Referee in Bankruptcy.

355. List of Claims and Dividends to be Recorded by Referee and by Him Delivered to Trustee. [Form No. 40.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district, on the day of , A. D. .

A LIST OF DEBTS PROVED AND CLAIMED UNDER THE BANKRUPTCY OF , WITH DIVIDEND AT THE RATE OF PER CENT. THIS DAY DECLARED THEREON BY , A REFEREE IN BANKRUPTCY.

| No. | Creditors. <small>[To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.]</small> | Sum proved. | | Dividend. | |
|-----|--|-------------|--------|-----------|--------|
| | | Dollars. | Cents. | Dollars. | Cents. |
| | | | | | |

Referee in Bankruptcy.

356. Notice of Dividend. [Form No. 41:]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , on the day of , A. D. .
To , creditor of , bankrupt:

I hereby inform you that you may, on application at my office, , on the day of , or on any day thereafter, between the hours of , receive a warrant for the dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filling up and signing the subjoined letter.

Trustee.

357. Creditor's Letter to Trustee.

To _____, trustee in bankruptcy of the estate of _____, bankrupt:
 Please deliver to _____, the warrant for dividend payable out of the said estate to me.

Creditor.

358. Petition and Order for Sale by Auction of Real Estate. [Form No. 42.]

In the District Court of the United States for the _____ District of _____.

| | | |
|-------------------------------------|---|-----------------------|
| In the Matter of . Bankrupt . | } | <i>In Bankruptcy.</i> |
|-------------------------------------|---|-----------------------|

Respectfully represents _____, trustee of the estate of said bankrupt, that it would be for the benefit of said estate that a certain portion of the real estate of said bankrupt, to wit: [*here describe it and its estimated value*] should be sold by auction, in lots or parcels, and upon terms and conditions, as follows:

Wherefore, he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this _____ day of _____, A. D. . . .

Trustee.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or, after hearing _____ in favor of said petition and _____ in opposition thereto*] it is ordered, that the said trustee be authorized to sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

WITNESS my hand this _____ day of _____, A. D. . . .

Referee in Bankruptcy.

359. Petition and Order for Redemption of Property from Lien. [Form No. 43.]

In the District Court of the United States for the _____ District of _____.

| | | |
|-------------------------------------|---|-----------------------|
| In the Matter of . Bankrupt . | } | <i>In Bankruptcy.</i> |
|-------------------------------------|---|-----------------------|

Respectfully represents _____, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe the mortgage*], or to a conditional contract [*describing it*], or to a lien [*describe the origin and nature of the lien*], [*or, if the property be personal property, has been pledged or deposited and is subject to a lien for [describe the nature of the lien]*], and that it would be for the benefit of the estate that said property

should be redeemed and discharged from the lien thereon. Wherefore, he prays that he may be empowered to pay out of the assets of said estate in his hands the sum of _____, being the amount of said lien, in order to redeem said property therefrom.

Dated this _____ day of _____, A. D. _____.

Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or, after hearing _____ in favor of said petition and _____ in opposition thereto*], it is ordered, that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of _____, being the amount of the lien, in order to redeem the property therefrom.

WITNESS my hand this _____ day of _____, A. D. _____.

Referee in bankruptcy.

360. Petition and Order for Sale Subject to Lien. [Form No. 44.]

In the District Court of the United States for the _____ District of _____.

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

Respectfully represents _____, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe mortgage*], or to a conditional contract [*describe it*], or to a lien [*describe the origin and nature of the lien*], or [*if the property be personal property*] has been pledged or deposited and is subject to a lien for [*describe the nature of the lien*], and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore, he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this _____ day of _____, A. D. _____.

Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or, after hearing _____ in favor of said petition and _____ in opposition thereto*], it is ordered, that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [*or, at private sale*], keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

WITNESS my hand this _____ day of _____, A. D. _____.

Referee in Bankruptcy.

361. Petition and Order for Private Sale. [Form No. 45.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

Respectfully represents , duly appointed trustee of the estate of the aforesaid bankrupt.

That, for the following reasons, to wit,

it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to wit:

Wherefore, he prays that he may be authorized to sell the said property at private sale.

Dated this day of , A. D. .

Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or, after hearing in favor of said petition and in opposition thereto*], it is ordered, that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

WITNESS my hand this day of , A. D. .

Referee in Bankruptcy.

362. Petition and Order for Sale of Perishable Property. [Form No. 46.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

Respectfully represents , the said bankrupt [*or, a creditor, or, the receiver, or, the trustee of the said bankrupt's estate*].

That a part of the said estate, to wit,

now in , is perishable, and that there will be loss if the same is not sold immediately.

Wherefore, he prays the court to order that the same be sold immediately as aforesaid.

Dated this day of , A. D. .

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to the

creditors of the said bankrupt [*or*, without notice to the creditors], now, after due hearing, no adverse interest being represented thereat [*or*, after hearing in favor of said petition and in opposition thereto] I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is, therefore, ordered, that the same be sold forthwith and the proceeds thereof deposited in court.

WITNESS my hand this day of , A. D.

Referee in Bankruptcy.

363. Trustee's Report of Exempted Property. [Form No. 47.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , on the day of , .

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of congress relating to bankruptcy.

| General head. | Particular description. | Value. | |
|---|-------------------------|--------|------|
| | | Dolls. | Cts. |
| Military uniform, arms, and equipments..... | | | |
| Property exempted by State laws..... | | | |

Trustee.

364. Trustee's Return of no Assets. [Form No. 48.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

At , in said district, on the day of , A. D. .

On the day aforesaid, before me comes , of , in the county of , and state of , and makes oath, and says that he, as trustee of the estate and effects of the above-named bankrupt , neither received nor paid any moneys on account of the estate.

Subscribed and sworn to before me, at ,
 this day of , A. D. .

Referee in Bankruptcy.

365. Account of Trustee. [Form No. 49.]

Dr. *The estate of* , *bankrupt* , *in account with* , *trustee.* Cr.

| | Dolls. | Cts. | Dolls. | Cts. | | | Dolls. | Cts. | Dolls. | Cts. |
|--|--------|------|--------|------|--|--|--------|------|--------|------|
| | | | | | | | | | | |

366. Oath to Final Account of Trustee. [Form No. 50.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

On this day of , A. D. , before me comes , of , in the county of , and state of , and makes oath, and says that he was, on the day of , A. D. , appointed trustee of the estate and effects of the above-named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed, containing sheets of paper, the first sheet whereof is marked with the letter [reference may here also be made to any prior account filed by said trustee] is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above-named bankrupt , and that the payments purporting in such account to have been made by said trustee have been so made by him. And he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

Trustee.

Subscribed and sworn to before me, at ,
in said district of , this
day of , A. D. .

[Official character.]

367. Order Allowing Account and Discharging Trustee. [Form No. 51.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered, that the same be allowed, and that the said trustee be discharged of his trust.

Referee in Bankruptcy.

368. Petition for Removal of Trustee. [Form No. 52.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

To the Hon. , judge of the district court for the district of :

The petition of , one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that , heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to wit: [*here set forth the particular cause or causes for which such removal is requested.*]

Wherefore, prays that notice may be served upon said , trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

369. Notice of Petition for Removal of Trustee. [Form No. 53.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

At , on the day of , A. D. .
To , trustee of the estate of , bankrupt:

You are hereby notified to appear before this court, at , on the day of , A. D. , at o'clock, . m., to show cause (if any you have) why you should not be removed from your trust as trustee as aforesaid, according to the prayer of the petition of , one of the creditors of said bankrupt, filed in this court, on the day of , A. D. , in which it is alleged [*here insert the allegation of the petition*].

Clerk.

370. Order for Removal of Trustee. [Form No. 54.]

In the District Court of the United States for the District of .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

Whereas , of , did, on the day of , A. D. , present his petition to this court, praying that for the reasons therein set forth, , the trustee of the estate of said , bankrupt, might be removed;

Now, therefore, upon reading the said petition of the said , and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee;

It is ordered, that the said be removed from the trust as trustee of the

estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said _____, trustee [*or*, out of the estate of the said _____, subject to prior charges].

WITNESS the Hon. _____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. _____ .

Clerk.

[SEAL OF THE COURT.]

371. Order for Choice of New Trustee. [Form No. 55.]

In the District Court of the United States for the _____ District of _____ .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

At _____, on the _____ day of _____, A. D. _____ .

Whereas, by reason of the removal [*or*, the death, *or*, resignation] of _____, heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee;

It is ordered, that a meeting of the creditors of said bankrupt be held at _____, in _____, in said district, on the _____ day of _____, A. D. _____, for the choice of a new trustee of said estate.

And it is further ordered, that notice be given to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

Referee in Bankruptcy.

372. Certificate by Referee to Judge. [Form No. 56.]

In the District Court of the United States for the _____ District of _____ .

In the Matter of

Bankrupt .

} *In Bankruptcy.*

I, _____, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings: [*Here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon.*]

And the said question is certified to the judge for his opinion thereon.

Dated at _____, the _____ day of _____, A. D. _____ .

Referee in Bankruptcy.

373. Bankrupt's Petition for Discharge. [Form No. 57.]

In the Matter of

Bankrupt .

} *In Bankruptcy.*

To the Hon. _____, judge of the district court of the United States for the district of _____ :
_____ of _____, in the county of _____, and state of _____, in said district,

respectfully represents that on the day of , last past, he was duly adjudged bankrupt under the acts of congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore, he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this day of , A. D. .

Bankrupt.

374. Order of Notice Thereon.

District of , ss.

On this day of , A. D. , on reading the foregoing petition, it is

Ordered by the court, that a hearing be had upon the same on the day of , A. D. 189 , before said court, at , in said district, at o'clock in the noon; and that notice thereof be published in , a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the court, that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

WITNESS the Hon. , judge of the said court, and the seal thereof, at , in said district, on the day of , A. D.

[SEAL OF THE COURT.]

Clerk.

 hereby depose, on oath, that the foregoing order was published in the on the following days, viz.:

On the day of , and on the day of , in the year .

District of .

Personally appeared , and made oath that the foregoing statement by him subscribed is true.

Before me.

[Official character.]

I hereby certify, that I have on this day of , A. D. , sent by mail copies of the above order, as therein directed.

Clerk.

375. Specification of Grounds of Opposition to Bankrupt's Discharge.
[Form No. 58.]

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

 , of , in the county of , and state of , a party interested in the estate of said , bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specification: [*Here specify the grounds of opposition.*]

Creditor.

376. Discharge of Bankrupt. [Form No. 59.]

District Court of the United States, District of _____ :

Whereas, _____, of _____, in said district, has been duly adjudged a bankrupt, under the acts of congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is, therefore, ordered by this court that said _____ be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the day of _____, A. D. _____, on which day the petition for adjudication was filed him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

WITNESS the Hon. _____, judge of said district court, and the seal thereof, this _____ day of _____, A. D. _____.

Clerk.

[SEAL OF THE COURT.]

377. Petition for Meeting to Consider Composition. [Form No. 60.]

District Court of the United States for the District of _____.

In the Matter of

Bankrupt .

} *In Bankruptcy.*

To the Hon. _____, judge of the district court of the United States for the district of _____ :

The above-named bankrupt respectfully represent that a composition of _____ per cent. upon all unsecured debts, not entitled to a priority in satisfaction of _____ debts has been proposed by _____ to _____ creditors, as provided by the acts of congress relating to bankruptcy, and _____ verily believe that the said composition will be accepted by a majority in number and in value of _____ creditors whose claims are allowed.

Wherefore, he pray that a meeting of _____ creditors may be duly called to act upon said proposal for a composition, according to the provisions of said acts and the rules of court.

Bankrupt.

378. Application for Confirmation of Composition. [Form No. 61.]

In the District Court of the United States for the District of _____.

In the Matter of

Bankrupt .

} *In Bankruptcy.*

To the Hon. _____, judge of the district court of the United States for the district of _____ :

At _____, in said district, on the _____ day of _____, A. D. _____, now comes _____, the above-named bankrupt, and respectfully represents to the court that, after he had been examined in open court [or, at a meeting of his creditors], and had filed in court a schedule of his property and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount

of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of dollars, has been deposited, subject to the order of the judge, in the National Bank, of , a designated depository of money in bankruptcy cases.

Wherefore, the said respectfully asks that the said composition may be confirmed by the court.

Bankrupt.

379. Order Confirming Composition. [Form No. 62.]

In the District Court of the United States for the District of .

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|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order, and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of congress relating to bankruptcy: It is therefore hereby ordered that the said composition be, and it hereby is, confirmed.

Witness the Hon. , judge of said court, and the seal thereof, this day of , A. D. .

[SEAL OF THE COURT.]

Clerk.

380. Order of Distribution on Composition. [Form No. 63.]

UNITED STATES OF AMERICA:

In the District Court of the United States for the District of .

| | | |
|------------------------------------|---|-----------------------|
| In the Matter of Bankrupt . | } | <i>In Bankruptcy.</i> |
|------------------------------------|---|-----------------------|

The composition offered by the above-named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit shall be made by the clerk of the court as follows, to wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims. on the files in this case, which list is made a part of this order.

Witness the Hon. , judge of said court, and the seal thereof, this day of , A. D. .

[SEAL OF THE COURT.]

Clerk.

CHAPTER XII.

BILLS OF EXCHANGE.

A BILL OF EXCHANGE is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed, determinable future time a sum certain in money to order or bearer.¹ The person making and signing such a bill is called the drawer; the person directed to make the payment is called the drawee, and the person in whose favor it is made is called the payee. Sometimes the drawer and the payee are the same person—that is, the bill is drawn payable to the drawer's order. If the payee of a bill writes his name upon the back of it, and transfers it to a fourth person, he becomes an indorser, and the person thus taking the bill is termed the indorsee. An indorsee may in turn become indorser, by transferring it in the same way. The person who at any given time has the right to the bill, is termed the holder.

An *indorsement in blank* is where the indorser writes his name only on the back of the note; and it is a mere agreement to pay, on the usual conditions of demand and notice. If he wishes to transfer the bill without making himself liable, he should write before his name, the words "without recourse," or, if he indorses merely as agent to transfer the nominal title, he should add the word "agent" to his signature.²

In accepting a bill of exchange or draft, the acceptor writes the word "accepted," together with the date when accepted, and his own signature, and sometimes the place of payment, across the face or on the back of the bill or draft. But the signature alone written across the face of the bill is sufficient to bind the writer as acceptor. The acceptance must be absolute according to the tenor of the bill.

Bills drawn in one state and payable in another state or country are foreign bills. Such bills are usually drawn in several parts, the whole of each making up what is called a set. Commonly the drawer delivers to the payee three bills of the same tenor and date; and each of these contains a condition that it is to be paid, provided the others remain unpaid; and all of them collectively amount to one bill, and a payment to the holder of either is good, and a payment of one of the set is payment of the whole.

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381. Bill of Exchange.

\$1,000.

NEW YORK, January 1, 19 .

At sight [*or*, days after sight; *or*, days after date; *or*, on the
day of ,], pay to the order of [*naming payee*] one thousand
dollars, and charge the same to account of,

[*Signature of drawer.*]

To Messrs. [*naming drawee*],
Philadelphia.

¹The above definition of a bill is taken from the Negotiable Instruments Laws, passed according to the draft prepared by the Commissioners on Uniformity of Laws, in New York (L. 1897, c. 612); Connecticut (L. 1897, c. 74); Colorado (L. 1897, c. 239); Florida (L. 1897, c. 4524).

²The figures 1, 2, 8 written in pencil on the back of a bill of exchange were held sufficient to charge the person as indorser. *Brown v. Bank*, 6 Hill, 443.

382. A Set of Bills.

No. 592.—£1,000 Stg. NEW YORK, January 1, 19 .

Sixty days after sight of this first of exchange [second and third unpaid], pay to A. B. or order, one thousand pounds sterling, value received, and charge the same to the account of,

C. D.

To Messrs. E. F. & Co.,
Liverpool.

No. 592.—£1,000 Stg. NEW YORK, January 1, 19 .

Sixty days after sight of this second of exchange [first and third unpaid], pay to A. B. or order, one thousand pounds sterling, value received, and charge the same to the account of,

C. D.

To Messrs. E. F. & Co.,
Liverpool.

No. 592.—£1,000 Stg. NEW YORK, January 1, 19 .

Sixty days after sight of this third of exchange [first and second unpaid], pay to A. B. or order, one thousand pounds sterling, value received, and charge the same to the account of,

C. D.

To Messrs. E. F. & Co.,
Liverpool.

383. Indorsement to Order.

Pay to the order of G. H.,
A. B.

384. Indorsement to Agents, for Collection.

Pay to the order of the cashier of the First National Bank of New York, for collection.

385. Indorsement Without Recourse.

Pay to the order of G. H.,
without recourse,
A. B.

386. Indorsement by Attorney in Fact.

Pay to the order of G. H.,
A. B., by M. N., his Attorney.

387. Acceptance.

Accepted [*date*], payable at [our office, No. , street, Liverpool, England] [or, at Bank, Liverpool, England].

[*Signature of acceptor.*]

See, also, Chapter on Promissory Notes.

CHAPTER XIII.

BILLS OF LADING.

A BILL OF LADING is the written evidence of a contract for the carriage and delivery of goods, usually by water or railroad, for a certain freight. It is signed by the captain or master of the ship or vessel, or by the agent of the railroad, and states, among other things, by whom the goods are shipped, and where and to whom they are to be delivered. There are generally three or more parts or copies of the instrument; one of which is usually sent to the consignee by the ship which carries the goods; another is sent to him by some other conveyance, and a third is kept by the merchant or shipper. Contracts for the freighting of goods must have all these essential qualities, or else they cannot have the effect of bills of lading.

Signature by the owner of the vessel may, however, be sufficient.

In respect to the agreement to carry and deliver the goods, the bill of lading is a contract, to be construed, like all other written contracts, according to the legal import of its terms, and it may not be varied by parol evidence. The receipt embodied in it is not, however, conclusive, and does not preclude the carrier from showing what was the actual quantity put on board; nor does the ordinary admission in the bill of lading that the goods were received in good order, preclude him from showing the true condition of the property at the time of shipping. The common-law liability of the carrier may be qualified by express agreement of the parties embodied in the bill of lading.

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388. Maritime Bill of Lading. [Short Form.]

SHIPPED, in good order and well-conditioned, by [*name the consignor of the goods*], on board the [*describe vessel*], called the [*name vessel*], whereof M. N. is master, now lying in the port of _____, and bound for the port of _____, [*here designate the merchandise*], being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of _____ [the dangers of the seas only

excepted],¹ unto [*name of consignee*], or to his [*or, their*] assigns, he or they paying freight for the said _____, with _____ primage and average accustomed.

IN WITNESS WHEREOF, the master or purser of the said vessel hath affirmed to [three] bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated the _____ day of _____, 19 _____.

[*Signature of master.*]

¹ The clause, "the dangers of the seas excepted," does not affect the question whether freight has been earned or not. Its effect is only to exempt the carrier from liability to pay for the cargo when lost through the danger of the seas. And unless there is an express agreement to the contrary, freight paid in advance may be recovered back, if the voyage is not performed, although prevented by the dangers of the seas, and without fault Phelps v. Williamson, 5 Sandf. 578; s. c., 10 N. Y. Leg. Obs. 272.

389. Maritime Bill of Lading.

MARKS AND NUMBERS.

Weight ; Rate from New York to ; if Class

| | | | | | | | | |
|------|------|------|------|------|------|------|-----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | F | G |
| per | per | per | per | per | per | per | per | per |
| 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| lbs. | lbs. | lbs. | lbs. | lbs. | lbs. | lbs. | bbl | bbl |

(Weight and rate subject to correction.) Rate inserted by for Agent.

Advances, \$

§ 8. EXTRACTS FROM THE LAWS OF THE UNITED STATES RELATING TO STEAMBOATS.—“Section 8. And be it further enacted, that hereafter all gunpowder, oil of turpentine, oil of vitriol, camphene or other explosive burning fluids and materials which ignite by friction (matches, etc.), when packed and put up for shipment on board any such vessel, shall be securely packed or put up separately from each other and from all other articles, and the package, box, cask, or vessel containing the same shall be distinctly marked on the outside with the name or description of the articles contained therein; and every person who shall pack or put up, or cause to be packed or put up, for shipment on board of any such vessel any gunpowder, oil of turpentine, oil of vitriol, camphene, or any other explosive burning fluids or materials that ignite by friction, otherwise than aforesaid, or shall ship the same unless packed and marked as aforesaid, on board any steam vessel carrying passengers, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding eighteen months, or both.

No. New York, Received by Steamship Company of from under the contract hereinafter contained, the property mentioned below, marked and numbered as per margin, in apparent good order and condition (contents and value unknown), viz.: Consigned to at , via , from to be transported by Steamship appointed to sail , or by any other or succeeding steamer or vessel, whether belonging to said corporation or to any other owner, to the port of , and there, if that be their destination, to be delivered to consignee or his assigns, if called for by him or them, as in this contract provided, he or they paying freight and charges thereon, and average, if any; or, if destined beyond, to be there delivered to connecting carrier, and so on by one connecting carrier to another, until they reach the station or wharf nearest to the ultimate destination. If their ultimate destination be beyond the point for which rates are named, they may, by the connecting carrier nearest to such ultimate destination, be delivered to any other carrier, to be transported to such ultimate point; and the carrier so selected shall be regarded exclusively as the agent of the owner or consignee.

Each carrier shall be bound (subject to the limitations and exceptions contained in this contract) to deliver said goods in the same order and condition as that in which it received them; and the ultimate carrier to deliver them at its station or wharf to the consignee or his assigns, if called for by him or them, as in this contract provided, he or they paying freight and charges thereon, and average, if any.

It is mutually agreed that the liability of each carrier, as to goods destined beyond its own route, shall be terminated by proper delivery of them to the next succeeding carrier.

The carrier shall have liberty to transfer the goods to and transport them by lighters, barges, or any other vessel than that named, and shall have liberty to sail without pilots, to tow and assist vessels in any situation, and go to and stop at any port or ports on route, or beyond, and to deviate, with like privilege to stop. It is agreed that the goods may be lightered, ferried, or carted to the consignee or a connecting carrier, at the owner's risk.

It is agreed that the carrier shall not be liable for loss of or damage to cotton while in or at any press, or during transportation to or from press, and also that the carrier has liberty to compress.

No carrier, or the property of any, shall be liable for gold, silver, precious stones or metals, jewelry, or treasure of any kind, bank notes, securities, silks, furs, laces, pictures, plate, china, glass, or statuary, unless bills of lading are signed therefor, in which their nature and value are expressed and extra freight expressed and paid for the assumption of extraordinary risk, nor for any loss or damage arising from any of the following causes, viz.: fire, from any cause, on land or on water, jettison, ice, freshets, floods, weather, pirates, robbers or thieves, acts of God or of the country's enemies, riots, collisions, explosions, accidents to boilers or machinery, stranding, straining, any accident on or perils of the seas or other waters, or of steam or inland navigation, restraints of government, legal process, claims of ownership by third parties, detention, deviation, or accidental delay, want of proper cooerage or mending, insufficiency of package, in strength or otherwise, rust, dampness, loss in weight, leakage, breakage, sweat, blowing, bursting of casks or packages, from weakness or natural causes, evaporation, vermin, frost, heat, smell, contact with or proximity to other goods, natural decay, or exposure to weather; or for loss or damage of any kind on goods whose bulk or nature require them to be carried on deck or on open cars; or for the condition of packages or any deficiency in the contents thereof, if receipted by the consignee as in good order. All liability under this bill of lading shall be estimated on the basis of the actual market value of the goods at the place and time of shipment.

Explosive, inflammable, or other dangerous articles may be transported, if the carrier chooses, on deck, or elsewhere, and they shall, in all cases, be at the owner's risk. If any such articles be secretly delivered to the carrier, the shipper shall be responsible for any damage resulting therefrom, and such articles may be destroyed by the carrier without incurring any liability therefor. All articles named in this bill of lading are subject to charges for necessary cooerage and repairs. No liability shall exist for wrong carriage or delivery of goods marked with initials or imperfectly marked, unless name and address of consignee be given in writing at time of shipment, such marking being agreed to be taken as proof of contributory negligence. All claims for damage to goods must be made, and the nature and extent thereof fully disclosed in the presence of the agent of the company having the same then in custody, before they are removed from the station or wharf. Unless written demand for damage shall be made upon the carrier liable therefor, or upon the carrier which actually delivered the goods, within ten days after delivery, all claims for damage shall be taken to have been waived, and no suit shall thereafter be maintainable to recover the same. No agent or employee shall have authority to waive such demand.

In case of detention by quarantine, obliging a discharge of the articles named in this bill of lading, all risk and liability of the carrier and its property shall cease, and the obligations under this bill of lading be deemed to have been entirely fulfilled when the articles shall have been thus discharged; and all risks and expenses incurred thereafter shall be on account of shipper, owner, and consignee. The several carriers shall have a lien upon the goods specified in this bill of lading for all arrearages of freight and charges due by the same owners or consignees on other goods. In case of loss, detriment, or damage to the goods, or delay in the transportation thereof, imposing any liability hereunder, the carrier in whose actual custody they were at the time of such loss, damage, detriment, or delay shall alone be responsible therefor. The receipt

of any carrier for the goods shall be *prima facie* evidence of the condition in which he received them, in a suit against any other carrier. In the event of the sale of the goods because of damage or otherwise, at any point short of their ultimate destination, it is agreed that out of the proceeds thereof *pro rata* freight for that part of the transportation which may have been completed shall be due and payable.

The goods shall be received by the owner or consignee at the station or wharf of the carrier at the ultimate point of delivery, and if not taken away within twenty-four hours after their arrival, may, at the option of the delivering carrier, be sent to a warehouse, or be permitted to lie where landed; all at the expense and risk of the shipper, owner, or consignee. If no address of a person at the ultimate point of delivery immediately entitled to such delivery be disclosed by this bill of lading, the same must be furnished by the shipper, owner, or consignee in writing, to the terminal carrier before the time at which in ordinary course of transportation the goods should arrive at such point. A failure to do this or remove the goods within twenty-four hours after their arrival shall, in case of any subsequent loss or injury to the latter, be treated as conclusive proof of negligence on the part of the shipper, owner, or consignee which contributed to such loss or injury. Negligence shall not be presumed as against any carrier under this bill of lading, and no liability shall exist therefor without actual and affirmative proof thereof.

This bill of lading is signed for the different carriers who may be engaged in the transportation, severally, but not jointly, and each of them is to be bound by and have the benefit of all the provisions thereof as if signed by it, the shipper, owner, and consignee. The acceptance of this bill of lading is an agreement on the part of the shipper, owner, and consignee of the goods, to be bound by all of its stipulations, exceptions, and conditions as fully as if they were all signed by such shipper, owner, and consignee. This bill of lading shall have the effect of a special contract, not liable to be modified by a receipt from or any act of an intermediate carrier.

And it is further agreed that after due notice to the consignee or owner of the arrival of the property described herein at the destination or point of delivery named in this bill of lading, and a reasonable period allowed thereafter for its removal from warehouses or cars, storage charges as usually are applicable at such point of delivery may be made and collected on the property remaining undelivered; and such demurrage charges made and collected on loaded cars as the delivering road may have established.

IN WITNESS WHEREOF, bills of lading, all of this tenor and date, have been signed, one whereof being accomplished, the others to stand void.

[Shippers are requested to read this contract.]

For Steamship Company.

390. Railroad Bill of Lading.

| | |
|---|--|
| MARKS AND CONSIGNEE: Via _____ Line, AND _____ RAILWAY RATES OF FREIGHT PER 100 LBS. From _____ To _____ | No. _____ Railway Company. Received from _____ a receipt or bill of lading of the _____ following described packages (contents and value unknown) in apparent good order, consigned as marked and numbered on the margin, to be transported over the line of said company and delivered in like good order and condition to the _____ Railway Company, at _____; thence by them delivered as aforesaid to be transported over the line of the _____ Railway Company, subject in all re- spects to the conditions and regulations of the pub- lished tariffs and rules of this company, to _____ and delivered in like good order (the reservations named below excepted) to the consignee, or to such com- pany or carriers (if the property is to be forwarded beyond said station), whose line may be considered a part of the route to the place of destination of said goods or property, it being distinctly understood that the responsibility of this company as a common |
|---|--|

No single shipment accepted for less than minimum charge provided in classifications and tariffs governing.

Car Load Rate per 100 lbs.

Subject to conditions and minimum weights provided for in the classifications or tariffs which govern on the shipment.

Charges Advanced \$

carrier shall cease at the station where delivered or tendered to such consignee, company, or carrier; but the rate of freight for the transportation of said property from place of shipment to _____ is guaranteed not to exceed the rate named herein, and charges advanced, provided contents of packages are correctly stated in railroad receipts (original and duplicate) on which this bill of lading is issued, subject to the following conditions:

Freight carried by the above-named company must be removed from the station during business hours, on the day of its arrival, or it will be stored at the owner's risk and expense, and in the event of its destruction or damage from any cause, while in the depot, it is agreed that said company shall be liable only as warehousemen.

IT IS AGREED, and is a part of the consideration of this contract, that the carrier will not be responsible for loss or injury to packages, the contents of which are unknown, for leakage of liquids, breakage or chafing of vehicles, musical instruments or furniture, the injury or breakage of looking glasses, glass show-cases, picture frames, machinery, stoves or stove furniture, castings or hollow-ware, or any kind of glass or Queensware, or any liquids or articles packed in glass, or for loss or damage of any articles whose bulk renders it necessary to carry in open cars; or for injury to the hidden contents of packages; for the loss of weight or otherwise of grain and coffee in bags, or rice in tierces, or any article caused by bad or insufficient cooorage, or for the decay of or injury to perishable articles; or for damage arising to any article carried, from the effects of heat or cold, or for the loss of nuts in bags, or lemons or oranges in boxes, unless covered by canvas, or losses by damage to goods occasioned by fire, unless such loss is the result of negligence of the carrier; or for chafage, wet or waste occurring to property packed in bags or bales or otherwise, not well and sufficiently packed, or for loss or damage occasioned by delays, by the acts of mobs or rioters, strikers, public enemies, Indians or other hands of marauders, or by the acts of God, or any other unavoidable cause; or for loss or damage on the rivers or seas traversed by the lines of the carrier.

When contents of packages are not correctly represented by shipper, the rates given above will be void, and the published rates of the carriers furnishing the transportation is guaranteed instead. When the words "Owner's Risk" are noted in this bill of lading, the shipper assumes the risk of all damages to the property except those arising from the carelessness or neglect of the carrier, its agents, or employees.

IT IS FURTHER AGREED, that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal liability or responsibility shall or may be incurred, that the carrier alone shall be held answerable therefor in whose custody the same may be at the time of the happening of such loss, detriment, or damage, and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods.

IT IS FURTHER AGREED, that in the event of the loss of any property, for which the carriers may be responsible under this bill of lading, the value or cost of the same at the point and time of shipment is to govern the settlement of the same, except shipments under an agreed value, and it is agreed, in consideration of rate hereby given, that in the event of the loss of the whole or any part thereof, the value of same is accepted by consignor, and fixed at the price named in the contract.

The carriers will not be responsible for damages on tobacco, unless it is proved to have occurred during the time of its transit over its line, and of this notice must be given within thirty hours after the arrival of the same.

Freight to be paid upon the weight indicated by the carrier's scales.

Goods in bond subject to custom-house regulations and expenses. Flour in barrels, and all packages subject to necessary cooerage.

The term "carrier," as used in this instrument, shall extend to every company or person into whose custody the said property shall pass in process of transportation to the place of consignment; and each and every carrier shall be entitled to the benefit of the stipulations and conditions hereof.

In accepting this bill of lading, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions and conditions.

THIS BILL OF LADING must be presented without alteration or erasure.

THE ORIGINAL BILL OF LADING only is negotiable. Copies are furnished for the information of those concerned, but are otherwise valueless, except as evidence that a bill of lading has been issued.

| No. OF PACKAGES. | DESCRIPTION OF ARTICLES. | SAID TO WEIGH. |
|------------------|---|----------------|
| | In consideration of the reduced rates hereby given on goods packed in hales, it is hereby agreed and made a part of this contract that the railroad companies over which the said goods shall pass in the course of transportation are released by the shipper of said goods from all claims for damages by chafing in transit. | |

391. Same; Another Form.

Bill of Lading No. _____ Piers Nos. _____
 RECEIVED from _____, the property described below, in apparent good order, except as noted [contents and condition of contents of packages unknown],

marked, consigned, and destined as indicated below, which the _____ Line agrees to carry to the said destination, if on the _____ railroad system, otherwise to deliver to another carrier on the route to said destination.

IT IS MUTUALLY AGREED, in consideration of the rate of freight hereinafter named, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained, and which are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

Upon all the conditions, whether printed or written, herein contained, it is mutually agreed that the rate of freight from Piers Nos. _____, to _____, is to be, in cents, per 100 lbs.:

| If times first class. | If first class. | If second class. | If third class. | If fourth class. | If fifth class. | If sixth class. | IF SPECIAL | |
|-----------------------|-----------------|------------------|-----------------|------------------|-----------------|-----------------|------------|-------|
| | | | | | | | Class. | Rate. |
| | | | | | | | | |

And advanced charges at _____, \$ _____ /100.

| Marks, consignee and destination. | Description of articles. | Weight (Subject to correction). |
|-----------------------------------|--------------------------|---------------------------------|
| | | |

CONDITIONS.

1. No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto, by causes beyond its control; or by floods or by fire; or by quarantine; or by riots, strikes, or stoppage of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet, or decay; or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or otherwise than with as reasonable dispatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery

to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.

4. All property shall be subject to necessary cooerage and baling at owner's cost. Each carrier over whose route cotton is to be carried hereunder shall have the privilege, at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is an elevator may [unless otherwise expressly noted herein, and then if it is not promptly unloaded] be there delivered, and placed with other grain of same kind, without respect to ownership, and if so delivered, shall be subject to a lien for elevator charges in addition to all other charges hereunder. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination, may be kept in the car, depot, or place of delivery of the carrier, at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost, and there held subject to lien for all freight and other charges. The delivering carrier may make a reasonable charge per day for the detention of any car and for use of track after the car has been held forty-eight hours for unloading, and may add such charge to all other charges hereunder, and hold said property subject to a lien therefor. Property destined to or taken from a station at which there is no regularly appointed agent, shall be entirely at the risk of owner when unloaded from cars, or until loaded into cars; and when received from or delivered on private or other sidings shall be at owner's risk until the cars are attached to, and after they are detached from, trains.

6. No carrier hereunder will carry, or be liable in any way for, any documents, specie, or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles, are indorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed without compensation.

8. Any alteration, addition, or erasure in this bill of lading, which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be void.

9. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of a party to be notified of the arrival of the property, the surrender of this bill of lading properly indorsed shall be

required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

10. Owner or consignee shall pay freight at the rate above stated, and all other charges accruing on said property before delivery, and according to weights as ascertained by any carrier hereunder; and if upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.

11. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property. And any carrier by water liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property.

, Agent.

Per

CHAPTER XIV.

BILLS OF SALE.

A BILL OF SALE is a formal written conveyance of personal property. If the property is delivered when sold, or if a part of the purchase money is paid, a written instrument is not necessary to make the conveyance binding, but it is convenient evidence of title. Making a bill of sale, however, is not enough, without delivery of the property, to protect the purchaser against the creditors of the seller. If the sale is not accompanied by an actual and continued change of possession, it is void as against creditors, and subsequent purchasers and mortgagees in good faith, unless the buyer can show that his purchase was made in good faith, without any intent to defraud them, and that there was some good reason for leaving the property in the hands of the seller.

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Statutory provisions as to recording, etc., of chattel mortgages apply in most states also to bills of sale, without transmutation of possession. As to provisions in New York state, see Lien Law, Birdseye, C. & G. Cons. Laws, p. 3136. See also chapters on ACKNOWLEDGMENTS OF DEEDS; CHATTEL MORTGAGES; COVENANTS.

392. Bill of Sale Describing the Chattels.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, farmer, party of the first part, in consideration of the sum of _____ dollars, to me paid by Y. Z., of _____ aforesaid, merchant, party of the second part, the receipt whereof I do hereby acknowledge [*or state other consideration — e. g., thus: in consideration of the sum of _____ dollars, to me to be paid by Y. Z., of _____, etc., in equal quarterly installments, secured by his notes at three, six, nine, and twelve months respectively*], have bargained, sold, granted, and conveyed, and transferred and delivered, and by these presents do bargain, sell, grant, and convey, and transfer and deliver unto the said party of the second part, his executors, administrators, and assigns, * the following goods and chattels [*here set out the chattels sold — e. g., thus:*] all the hops growing on my farm in said town, one yoke of oxen, red and white, heretofore on said farm, and one bay horse, with farm wagon, and harness, now in the keeping of M. N., at _____. TO HAVE AND TO HOLD the same unto the said party of the second part, his executors, administrators, and assigns, forever. And I do for myself, my heirs, executors, and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the said described goods hereby sold, unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the _____ day of _____,

Signed, sealed, and delivered in the presence of _____ A. B. [SEAL.]

[*Signature of witness.*]

[*Acknowledgment.*]

393. Bill of Sale of a Horse, with Warranty.

[*As in Form No. 392 to *, then as follows:*] one sorrel horse, with white forehead, known as Charley; TO HAVE AND TO HOLD the same unto the said party of the second part, his executors, administrators, and assigns, forever. AND I do hereby warrant the said horse to be sound in every respect, to be free from vice, to be well broken, and kind and gentle in single and in double harness, and under the saddle;

AND I do, for myself, my heirs, executors, and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the said described goods hereby sold unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, I hereunto set my hand and seal, the _____ day of _____,

Signed, sealed, and delivered in the presence of _____ A. B. [SEAL.]

[*Signature of witness.*]

394. Bill of Sale; Statutory Form of Maryland.

NOTE.—The following is a bill of sale prescribed by article 21, section 60 of the Public General Statutes of Maryland.

I, _____, of _____, in consideration of _____ dollars paid to me by _____, of _____, do hereby bargain and sell to the said _____, the following property:
[*here describe property.*]

WITNESS my hand and seal, this _____ day of _____, in the year _____.

[SEAL.]

395. Bill of Sale, Referring to a Schedule Annexed, for an Enumeration of the Goods.

[*As in Form No. 392 to *, then as follows:*] the furniture and household goods contained in my house, No. _____, in _____ street, in the city of _____, of which a schedule is hereunto annexed; TO HAVE AND TO HOLD the same unto the said party of the second part, his executors, administrators, and assigns, forever.

AND I do, for myself, my heirs, executors, and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the said described goods hereby sold, unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the _____ day of _____,

Signed, sealed, and delivered in the presence of _____ A. B. [SEAL.]

[*Signature of witness.*]

396. Schedule Annexed to the Foregoing Bill of Sale.

SCHEDULE of all the furniture and household goods mentioned in and conveyed by the annexed bill of sale:

One rosewood sofa,
Six do chairs,
One do armchair.

[*Thus enumerating all the goods.*]

Annexed and signed, this _____ day of _____,

[*Signature of witness.*]

[*Signature of party.*]

397. Bill of Sale, where a Schedule is to be Subsequently Made.

[*As in the preceding forms, but describing the goods in such words as these:*] All and singular the goods and stocks of goods and merchandise, consisting of whips, lashes, and materials therefor, now in the store of the party of the first part, at No. _____, street, in the city of _____, and in the factory of the said party of the first part, at _____, in the state of _____ [but excepting and reserving therefrom all goods sold, or agreed to be sold, and packed to be delivered to purchasers], and all the furniture and movable fixtures in said store, belonging to the party of the first part, a schedule of said goods and chattels to be made by the party of the first part, and annexed hereto with all convenient speed.

^ [*The schedule will be in the same form as No. 396.*]

398. Declaration of Symbolical Delivery, which May be Inserted.

[Add at end of either preceding form of bill, before the clause, IN WITNESS, etc.:] And I have put the said Y. Z. in full possession of said goods and chattels, by delivering him one chair and one table, being part of the said goods and chattels, in the name of all the said goods and chattels, at the sealing and delivery hereof.

399. Another Form; By Indorsement on the Bill of Sale.

BE IT REMEMBERED, that, on the day and year first within written, livery of seisin of the goods within bargained and sold, was delivered by the said A. B. to the said Y. Z. by the said A. B.'s giving to the said Y. Z. one silver cup, in the name of livery of seisin of the whole of said goods and chattels, in presence of us.

[Signatures of witnesses.]

400. Bill of Sale in Consideration of the Assignee's Agreeing to Maintain the Assignor for Life.

THIS INDENTURE, made on the day of , between A. B., of , in the county of , farmer, party of the first part, and Y. Z., his son, of the same place, party of the second part, WITNESSETH: That the party of the first part, in consideration of the covenants hereinafter contained, to be performed by the party of the second part, and of the sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, granted and conveyed, transferred and delivered, and by these presents does bargain, sell, grant, and convey, transfer, and deliver [*here set out the chattels sold — c. g., thus:*] All the farm tools, utensils, vehicles, and implements of the party of the first part, on his farm at aforesaid, and one horse, one cow, and ten sheep, and the hay and feed in the barn on said farm. TO HAVE AND TO HOLD the same unto the said party of the second part, his executors, administrators, and assigns, forever.

AND the party of the first part does, for himself and his heirs, executors, and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the said described goods hereby sold, unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever.

AND IN CONSIDERATION of the premises, the party of the second part doth hereby, for himself, his executors, and administrators, agree with the party of the first part that he will support and maintain, and comfortably and sufficiently clothe, the party of the first part, and in all respects care and provide for him for and during the remainder of his natural life; and that he, the said party of the second part, will pay unto the said party of the first part, the sum of dollars, on the first days of and , in each and every year during the said life: PROVIDED, HOWEVER, that the said party of the first part shall not refuse to reside in the county of , aforesaid, except such refusal be occasioned by inability to obtain comfortable and sufficient board, lodging, and maintenance in the said county.

IN WITNESS WHEREOF, the said parties have bereunto set their hands and seals, the day and year above written.

In presence of
[Signature of witness.]

A. B. [SEAL.]
Y. Z. [SEAL.]

[Acknowledgment.]

401. Bill of Sale of a Registered Vessel¹ of the United States.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that I, A. B., of _____, owner [or, we, A. B., of _____ (½), and C. D., of _____ (¾), owners] of the bark or vessel called the Mary, of New York, of the burden of _____ tons, or thereabouts, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to us in hand paid before the ensealing and delivery of these presents, by Y. Z., the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said Y. Z., his executors, administrators, and assigns, all the hull or body of the said bark or vessel, together with all the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereto appertaining and belonging; the certificate of the registry of which said bark or vessel is as follows — to wit [*here insert the registry at length — e. g., thus:*]

No. _____

In pursuance of an act of congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," A. B., of the city, county, and state of _____, has taken or subscribed the oath [or, affirmation] required by the said act; and having sworn that he, the said A. B., is the owner [or, that they, the said A. B. (½), and C. D. (¾), of said place, are the owners] of the ship or vessel called the Mary, of New York, whereof _____ is at present master, and is a citizen of the United States, and that the said ship or vessel was built at _____, in the state of _____, in the year 18 _____, as per Register No. _____, issued at this port this day, now canceled, property changed.

And said register having certified that the said ship or vessel has _____ decks and _____ masts, and her length is _____ feet and _____ tenths, her breadth _____ feet _____ tenths, her depth _____ feet and _____ tenths, under tonnage deck _____ tons _____ tenths, between decks above tonnage deck, _____ tons _____ tenths, inclosures on upper deck _____ tons _____ tenths, and that she measures _____ tons, and that she is a bark, has a square stern, no galleries, and billet head; and that the said A. B. having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said bark has been duly registered at the port of _____.

GIVEN under our hands and seals, at the port of _____, this _____ day of _____, in the year one thousand nine hundred and _____.

TO HAVE AND TO HOLD the said bark Mary, and appurtenances thereunto belonging, unto him, the said Y. Z., his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said Y. Z., his executors, administrators, and assigns, forever. And I, the said A. B. [or, we, the said A. B. and C. D.], have, and by these presents do promise, covenant, and agree, for myself, my [or, ourselves, our] heirs, executors, and administrators, to and with the said Y. Z. and his heirs, executors, administrators, and assigns, to warrant and defend the said bark Mary, and all the other before-

¹ Vessels engaged in the foreign trade are registered, and those engaged in the coasting trade are enrolled.

mentioned appurtenances, against all and every person and persons whomsoever.

IN TESTIMONY WHEREOF, I, the said A. B. [*or, we, the said A. B. and C. D.*], have hereunto set my hand and seal [*or, our hands and seals*], this day of , in the year of our Lord .

Sealed and delivered in the presence of [*Signatures and seals.*]

[*Signature of witness.*]

402. Acknowledgment of the Foregoing Bill of Sale.

STATE OF , }
County of , } ss.

On the day of the date hereof, personally appeared before me, A. B. [and C. D.], above named, to me known, and acknowledged the foregoing to be their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of office, this day of , .

[*Official signature.*]

[SEAL.]

403. Bill of Sale of an Enrolled Vessel of the United States.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that I, A. B., of the city, county, and state of New York, sole owner [*or, we, A. B., of , ½, and C. D., of , ½, owners*] of the schooner or vessel called the Ann, of the burden of . tons or thereabouts, for and in consideration of the sum of dollars, lawful money of the United States of America, to me [*or, us*] paid before the sealing and delivery of these presents, by Y. Z., secretary and treasurer of the Company, a corporation of , in the state of , the receipt whereof I [*or, we*] do hereby acknowledge, and am [*or, are*] therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell unto the said Y. Z., as secretary and treasurer as aforesaid, his successors and assigns, the whole of the said schooner or vessel, together with the whole of the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging. The certificate of the enrollment of which said schooner or vessel is as follows—to wit [*here insert the certificate of enrollment at length—e. g., thus:*]

ENROLLMENT.

Permanent.

No. 20.

In conformity to title L, "Regulation of vessels in domestic commerce," of the Revised Statutes of the United States, M. N., of , of the county of , in the state of , having taken or subscribed the oath required by said act, and having sworn that Y. Z., of , in the state of , secretary and treasurer of the Company, is a citizen of the United States, and sole owner of the ship or vessel called the Ann, of , whereof M. N. is master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at , in the state of , in the year eighteen hundred and , as per enrollment No. , issued at this port.

And said enrollment having certified that the said ship or vessel has

deck and masts, and that her length is feet tenths, her breadth feet tenths, her depth feet tenths, her height feet tenths, and that she measures tons, viz.: capacity under tonnage deck, tons, capacity between decks above tonnage deck, tons, capacity of inclosure on the upper deck, viz.: tons; that the following described spaces, and no others, have been omitted, viz.: : and that she is a square-sterned schooner, has a round tuck, no galleries, and a billet head. And the said A. B. having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said title, the said schooner has been duly enrolled at the port of .

GIVEN under my hand and seal, at the port of , this day of , in the year one thousand nine hundred and .

TO HAVE AND TO HOLD the said schooner or vessel Ann, and appurtenances thereunto belonging, unto him, the said Y. Z., secretary and treasurer, etc., as aforesaid, his successor and assigns, to the sole and only proper use, benefit, and behoof of him, the said Y. Z., his successor and assigns, as aforesaid, forever. AND I, the said A. B. [or, we the said A. B. and C. D.], have, and by these presents do promise, covenant, and agree, for myself, my heirs [or, ourselves, our heirs], executors and administrators, to and with the said Y. Z., his successors and assigns, to warrant and defend the said schooner or vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

IN TESTIMONY WHEREOF, the said A. B. [and C. D.] hereunto hath set his hand and seal [or, have set their hands and seals], this day of , nineteen hundred and .

[Signatures and seals.]

Sealed and delivered in presence of

[Signature of witness.]

[Acknowledgment.]

404. Bill of Sale of a Vessel not Registered or Enrolled.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

KNOW YE, that I, A. B., of , owner of the sloop called the , of the burden of tons, or thereabouts, in consideration of the sum of dollars, to me in hand paid, the receipt whereof I hereby acknowledge, have bargained and sold, and by these presents do bargain and sell, unto Y. Z., of , the said sloop, together with the mast, bowsprit, sails, boats, anchors, cables, and other appurtenances thereunto appertaining and belonging.

TO HAVE AND TO HOLD, the said sloop, and appurtenances thereunto belonging, unto him, the said Y. Z., his executors, administrators, and assigns, to his and their sole and only proper use, benefit, and behoof forever.

AND FURTHER, I do hereby promise, covenant, and agree, for myself, my heirs, executors, and administrators, to and with the said Y. Z., his executors, administrators, and assigns, to warrant and defend the title to the said sloop, and the appurtenances aforesaid, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , in the year one thousand nine hundred and

[Signature and seal.]

Sealed and delivered in presence of

[Signature of witness.]

[Acknowledgment.]

405. **Bill of Sale of Stocks Already Pledged to Another.**

WHEREAS, I, A. B., of _____, hotel-keeper, am justly indebted to W. X. and Y. Z. in the sum of _____ dollars; therefore, in consideration of such indebtedness, and of one dollar to me in hand paid by said W. X. and Y. Z., I hereby sell, assign, transfer, and set over to them _____ shares of the capital stock of the _____ Bank, in the city of _____, belonging to me, and now held by M. N., subject, however, to such claims as said M. N. may have on the same.

TO HAVE AND TO HOLD the said stock [subject as aforesaid] to the said W. X. and Y. Z., and their legal representatives and assigns forever, to be applied to the payment of such indebtedness; and for the purpose of enabling said W. X. and Y. Z. to demand, receive, collect, and dispose of said stock and said interest, I hereby appoint and constitute them my true and lawful attorneys, and authorize them to take all lawful means they may deem necessary and proper, in my name or otherwise, but at their own cost and expense, to collect, receive, and realize said stock and interest, and to settle, negotiate, and arrange the same, and to transfer said stock, and to do and perform every act and thing necessary to be done in the premises as if I, the said A. B., was personally present and assenting thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____,

In presence of _____

[Signature and Seal.]

[Signature of witness.]

CHAPTER XV.

BONDS.

A BOND is a written instrument under seal, by which the maker acknowledges some liability or duty, with a penalty for nonfulfilment. The maker of the bond is called the obligor; the person to whom it is made, the obligee. A seal is generally regarded as essential to the idea of a bond, although in some of the states it is not so. As to what is sufficient to constitute a seal, see the titles of the respective states in the chapter on ACKNOWLEDGMENT OF DEEDS.

No particular form of words is essential to constitute a bond, but any words which declare the intention of the parties, and denote that one is bound to the other, will be sufficient. The apt and appropriate form, however, is, first, a clause declaring that the obligor is bound to the obligee in a specified sum of money, for the payment of which he usually stipulates that he binds his heirs as well as his executors and administrators. The effect of this is to render the heirs liable upon it to the extent of the property which they inherit from him. This first part of the bond, which is termed the penal clause or the obligation, closes with a statement that the instrument is sealed, and of the date thereof. If nothing further is added, the instrument is termed a single bond, or bill penal. Usually, a condition is inserted before the signatures; the object of the condition is to state the acts, a performance of which on the part of the obligor or others will exonerate him from liability for the penalty. If the liability is intended to be limited by the circumstances or object under which the bond is given, they may conveniently be stated in a recital introducing the condition. As to construction of conditions in bonds in New York state, see Code Civ. Pro., § 1915.

The differences between a bond and an undertaking is that a bond is a promise under seal, and an undertaking is a bond without seal. *People v. Dando*, 20 Abb. N. C. 245, and note.

The chief difference between a bond and an unsealed note are that the seal imports a sufficient consideration to make the instrument binding; that the

bond is not usually barred by the Statute of Limitations until the lapse of twenty years; that the remedy may survive against the heirs if they are mentioned; and that a surety joining is not bound beyond the amount of the penalty.

A surety joining in a bond is bound to the obligee in the same sense as the principal, unless the bond is otherwise expressed; but he will be exonerated if the obligee, without his knowledge or consent, alters the obligation of the principal, to the prejudice of the surety. If those first signing a bond desire not to be bound unless all whom they expect to sign do so, they should declare their execution of it to be on this condition; and this should, for convenience, be expressed in the bond.

Where a bond is prescribed by a statute, it will be deemed valid if it conform substantially to the requirements of the statute, and do not vary in any matter to the prejudice of the party from whom it is exacted; and it will be deemed sufficient as towards the party to whom, or for whose benefit, such bond is given, if it do not vary to the prejudice of his rights. But every material requirement must be observed. If the bond contains anything illegal, the whole is void. If it contains anything superfluous, which is not illegal, the excess only is void. If any material thing is omitted, the statute is not complied with.

A bond should be completely written, as to all material parts, before it is delivered. The practice of executing and delivering, with any essential thing omitted to be inserted afterwards by another person than the obligor, is to be avoided. According to the view of the law which obtains in several of the states, such an instrument is wholly void.

As to general provisions relating to bonds in New York state, see Code Civ. Pro., §§ 1880-1892, 1915, etc. Many of the bonds formerly required from various officers in form of bonds are to be found now in the chapter on UNDERTAKINGS.

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I. BONDS CONDITIONED FOR THE PAYMENT OF MONEY ONLY.

The penal sum is usually twice the principal intended to be secured. If no place of payment is specified, it will be for the obligor to seek the obligee. If the place is specified, the obligee is not bound to accept payment elsewhere. If no time is specified, the bond is payable forthwith. If the payment is required to be "within" a certain period, or to be "on or before" a certain day, the obligor may pay at any time before the last day has passed. Where successive payments of interest or principal are stipulated for, the condition may provide that, upon default in any one, the obligee may elect to require payment of all; otherwise, he can only proceed for that which is in default.

406. Short Form of Bond for Payment of Money, With or Without Penalty.

[This is called a single bond in distinction from a double or conditional bond. See next form.]

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, am held and firmly bound, unto Y. Z., of _____, for the payment of _____ dollars, on the _____ day of _____, 18 _____, with interest at _____ per cent. per annum; for which I bind myself, my heirs, executors, and administrators, to the said Y. Z., his executors, administrators, and assigns [in the penal sum of _____ dollars].

WITNESS my hand and seal, this _____ day of _____, _____.

[Signature and seal.]

[Acknowledgment.]

407. Common Form of Bond for Payment of Money.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of _____, in the county of _____, and state of _____, merchant, am held and firmly bound unto Y. Z., of the said town, farmer, in the sum of _____ dollars [inserting the penal sum, which is commonly double the amount of the principal sum intended to be secured, in order to cover interest, costs, expenses, and other contingencies], good and lawful money of the United States, to be paid the said Y. Z., his executors, administrators, or assigns, for which payment well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the _____ day of _____, _____.

THE CONDITION of this obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named Y. Z., his executors, administrators, or assigns, * the just and full sum of _____ dollars [inserting the principal intended to be secured], with interest at the rate of _____ per cent. per annum [or, with legal interest]† for the same, on [or before] the day of _____, which will be in the year one thousand eight hundred and _____, without fraud or other delay, *|then this obligation is to be void and of no effect, otherwise to remain in full force and virtue.

In presence of _____

[Signature and seal.]

[Acknowledgment.] *

408. The Same; With Interest Periodically Meanwhile.

[As in Form 407, substituting, instead of the words between * *, the following:] the just and full sum of dollars [stating the whole principal secured], on the day of , which will be in the year one thousand eight hundred and , with interest thereon from the date hereof [or, from the day of ,], at the rate of per cent. per annum [or, with legal interest thereon], payable semi-annually [or, quarterly], on the day of and [designating the months intended], in each year, until the whole of said principal sum be paid, without fraud or other delay,

409. The Same; For Payment in Equal Annual Installments, with Interest Annually on what Remains Unpaid.

[As in Form 407, to the first *, concluding thus:] the just and full sum of dollars [stating the whole principal secured], in annual payments from the date hereof [or, commencing on the day of ,], with interest thereon, at the rate of per cent. per annum [or, with legal interest thereon], payable annually, with such installments [or, semi-annually, or, quarterly, on the days of , naming the months for payment of interest, in each year], without fraud or other delay, then this obligation to be void; but if default shall be made in payment of any or either of the said sums, on the days on which the same ought to be paid, as aforesaid, then this obligation shall remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

410. The Same; For Payment in Unequal Installments, with Interest.

[As in Form 407, to the first *, concluding thus:] the just and full sum of dollars [stating the whole principal secured], in manner following— that is to say, the sum of dollars, on the day of next; the sum of dollars, on the day of ; and the remaining sum of dollars, in one year from the said last-mentioned date, together with the interest, at the rate of per cent. per annum [or, with legal interest], on the whole sum remaining unpaid, at the time of each payment, without fraud or other delay, then this obligation shall be void; but if default shall be made, in payment of any or either of the said sums, on the days on which the same ought to be paid, as aforesaid, then this obligation shall remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

411. The Same; For Payment in Installments, with Interest on each Installment, as it Falls Due.

[As in Form 407, substituting, instead of the words between * *, the following:] the just and full sum of dollars [stating the whole principal secured], with interest at the rate of per cent. per annum [or, with legal interest], said principal to be paid in equal annual installments, with the interest on such installment, on the day of in each year, without fraud or other delay.

412. The Same; For Payment After Death of Third Person.

[As in Form 407, substituting, instead of the words between the * *, the following:] the just and full sum of dollars [stating the whole principal secured], with interest at the rate of per cent. per annum [or, with legal interest] within the space of months next after the decease of M. N., , merchant, without fraud or other delay,

413. Bond with Interest Clause, Usual where Mortgage is Given.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the city of , in the state of , am held and firmly bound unto Y. Z., of the same place, in the sum of dollars [inserting the penalty], lawful money, of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the day of , .†

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named Y. Z., his executors, administrators, or assigns, the just and full sum of dollars, on the day of , which will be in the year one thousand eight hundred and , with interest, at per cent. per annum, payable half yearly from the date hereof, without fraud or other delay, then the above obligation to be void; otherwise, to remain in full force.

AND IT IS hereby expressly agreed, that, should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of days [usually twenty or thirty days], then and from thenceforth — that is to say, after the lapse of the said days — the aforesaid principal sum of dollars, with all arrearage of interest thereon, shall, at the option of the said Y. Z., or his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

In presence of [Signature and seal.]

[Acknowledged .]

414. The Same; With Interest, Insurance, Tax, Assessment, Receiver and Continuous Liability Clauses.

[Penal clause, as in preceding form, or Form 415, to the †.]

THE CONDITION of the above obligation is such, that if the above-bounden , heirs, executors, administrators, shall pay unto the above-named , executors, administrators, or assigns, the sum of dollars, on the day of , which will be in the year , and the interest thereon, to be computed from at and after the rate of per cent. per annum, and to be paid , then the above obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, that the whole of the said principal sum shall become due, at the option of said mortgagee or obligee, after de-

fault in the payment of interest for days, or after default in the payment of any tax or assessment for , after notice and demand.

AND the said party of the first part also covenants with the party of the second part, that the party of the first part will keep the buildings on the said premises described in the mortgage accompanying this bond, insured against loss by fire for the benefit of the mortgagee.

AND the said party of the second part shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and receive the rents, issues, and profits thereof, and apply the same, after payment of all necessary charges and expenses, on account of the principal and interest of this bond, and the mortgage accompanying the same, and the said obligee and his legal representatives, or assigns, shall be at liberty and have the right immediately after any such default, upon a complaint filed, or any other legal proceedings commenced for the foreclosure of said mortgage, to apply for, and shall be entitled as a matter of right, and without regard to the value of the premises, or the solvency or insolvency of said obligor, or of any owner of the mortgaged premises, and on ten days' notice to said obligor, heirs and assigns, in any court of competent jurisdiction, to have granted a receiver of the rents, issues, and profits of the said mortgaged premises, with power to lease said premises for a term to be approved by the court, with power to pay taxes and assessments, and water rents which are, or may become a lien on said premises, and keep the same insured, and with power to take proceedings to dispossess tenants, and make all necessary repairs, and with such other powers as may be deemed necessary; who, after deducting all charges and expenses attending the execution of the said trust as receiver, shall apply the residue of said rents and profits to the payment and satisfaction of this bond, and the mortgage accompanying the same, or to any deficiency which may arise after applying the proceeds of the sale of said premises to the amount due, including interest and costs, and expenses of the foreclosure and sale.

AND in case of a sale or transfer of any property embraced in the mortgage collateral to this bond, and in case of any agreement or stipulation between the owner or owners, of said mortgaged property, and the said obligee, extending the time or modifying the terms of payment above recited, then the above-mentioned obligor shall continue liable to pay the sum above secured according to the terms of any such agreement, unless expressly released and discharged in writing, by the above-named obligor.

In presence of

[Signature and seal.]

[Acknowledgment.]

415. Bond by Several Obligors.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the city of , in the state of , merchant, and C. D. and E. F., of the town of , in the county of , in said state, manufacturers, are held and firmly bound unto Y. Z., of the city of , and state of , in the sum of dollars [inserting the penal sum], good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns, for which payment well and truly to be made, we do bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents [or, if it be desired to bind them jointly only, say, do bind ourselves

and our heirs, executors, and administrators, jointly but not severally, firmly by these presents].

Sealed with our seals. Dated this day of , .†

THE CONDITION of the above obligation is such, that if the above-bounden A. B., C. D., and E. F., their heirs, executors, or administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named Y. Z., his executors, administrators, or assigns, the just and full sum [stating the amount to be paid, and concluding as in either preceding Forms 407 to 414].

In presence of

[Signatures and seals.]

[Acknowledgment.]

416. Signature by an Obligor Who Will Not be Bound Unless Others Sign.

Executed and delivered by me, A. B., on condition that C. D. and E. F., the obligors above named, also join.

A. B. [SEAL.]

417. Bond by Several Persons, Bound Severally, for Several Amounts.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of , in the county of , and state of , farmer, and C. D., of the same place, merchant, and E. F. and G. H., of , in said county, carpenters, are severally and respectively held and firmly bound unto Y. Z., of said , in the respective sums following, viz., the said A. B., C. D., and E. F., in the sum of dollars each, and the said G. H. in the sum of dollars, good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns; for which said several payments well and truly to be made, each of them doth hereby bind himself, his heirs, executors, and administrators, severally and respectively, but not jointly, nor one for the other, firmly by these presents.

Sealed with our seals. Dated this day of , .

[Add condition according to circumstances of the case.]

In presence of

[Signatures and seals.]

[Acknowledgment.]

418. Bond by One Obligor to Several Obligees.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of , in the county of , and state of , blacksmith, am held and firmly bound unto U. V., of the city of , and state of , W. X., of the same place, and Y. Z., of , in the state of , merchants, in the sum of dollars [inserting the penal sum] good and lawful money of the United States, to be paid to the said U. V., W. X., and Y. Z., their executors, administrators, or assigns, for which payment, well and truly to be made, I do bind myself, and my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this day of . †

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named U. V., W. X., and Y. Z., or their executors, administrators, or assigns, the just and full sum [etc., stating the sum to be paid, and concluding as in either preceding Form 407 to 414].

In presence of

[Signatures and seals.]

[Acknowledgment.]

419. Bond to Executors or Administrators.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, am held and firmly bound unto W. X. and Y. Z., of _____, in said state, executors of the last will and testament of M. N., deceased [or, administrators of the goods, chattels, and credits which were of M. N., deceased], late of the city of _____, and state of _____, in the sum of _____ dollars [inserting the penal sum], good and lawful money of the United States, to be paid to the said executors [or, administrators] as aforesaid, their survivor or survivors, or their or his successors or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this _____ day of _____, 18 ____.

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named W. X. and Y. Z., executors [or, administrators] as aforesaid, the survivors, or survivor, or his or their assigns, the just and full sum [etc., stating the sum to be paid, and concluding as in either preceding Forms 407 to 414].

In presence of _____

[Signatures and seals.]

[Acknowledgment.]

For bond of Guardian, see chapter on GUARDIAN AND WARD.

420. Bond to an Unincorporated Society.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B. and C. D., of the city of _____, and state of _____, are held and firmly bound unto W. X. and Y. Z., also of said place, members [or, committee, or other officers] of [here designate the society by its full title], of said place, in the sum of _____ dollars, lawful money of the United States, to be paid to the said W. X. and Y. Z., or to their successors or assigns, in trust for the said society [or, association], for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the _____ day of _____, in the year 18 ____.

THE CONDITION of this obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, or administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named W. X. and Y. Z., their successors and assigns, for the said society [or, association], the just and full sum [etc., stating the amount to be paid, etc., and concluding as in either preceding Forms 407 to 414].

In presence of _____

[Signatures and seals.]

[Acknowledgment.]

421. Bond to a Corporation.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, merchant, am held and firmly bound unto [here insert the true title of the corporation — e. g., thus:] the _____ Bank of _____, in the city of _____, and state of _____, in the sum of _____ dollars

[*inserting the penal sum*], good and lawful money of the United States, to be paid to the said the Bank of , its successors, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this day of , .†

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named [*here insert title of corporation*], its successors or assigns, the just and full sum [*etc., stating the sum to be paid, etc., and concluding as in either preceding Forms 407 to 414*].

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

422. Bond by a Corporation.

KNOW ALL MEN BY THESE PRESENTS, that [*here insert the true title of the corporation — e. g., thus:*] the Bank of , is held and firmly bound unto Y. Z., of the city of , and state of , in the sum of dollars [*inserting the penal sum*], good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns, for which payment, well and truly to be made, the said bank doth bind itself, and its successors, firmly by these presents.

Sealed with the seal of said bank. Dated this day of , .†

THE CONDITION of the above obligation is such, that if the above-bounden [*here insert title of corporation*], or its successors, shall well and truly pay, or cause to be paid, unto the above-named Y. Z., his executors, administrators, or assigns, the just and full sum of dollars [*stating the sum intended to be paid, etc., as in either preceding Forms 407 to 414, and continuing*], then this obligation to be void; otherwise, to remain in full force and virtue.

IN WITNESS WHEREOF, and in pursuance of a resolution of the board of directors, passed on the day of , 18 , the corporate seal of the said corporation is hereto affixed, and these presents duly signed by the president and treasurer [*or, cashier*] of said company, this day of , .]

[*Corporate seal.*]

Attest:

In presence of

[*Name of corporation.*]

[*Acknowledgment.*]

423. Negotiable Bond of Corporation.

[*Title of the corporation obligor.*]

No. .

\$.

This certifies that the Railroad Company has received the sum of one thousand dollars from Y. Z., and in consideration thereof doth hereby promise and agree to pay to him, or the bearer [*or his assigns*], the said sum of one thousand dollars, on the day of , one thousand eight hundred and ; and also interest for the same at the rate of per centum per annum, on the day of every and ensuing the date hereof, until said principal sum shall be paid, upon presentation of the annexed interest war-

rants, as they severally become payable, at the office of the company, in the city of .

IN WITNESS WHEREOF, and in pursuance of a resolution of the board of directors, passed on the day of , the corporate seal of the said corporation is hereto affixed, and these presents duly signed by the president and treasurer [*or, cashier*] of said company, this day of , .

In presence of

[*Name of corporation.*]

[*Acknowledgment.*]

For the later and more usual forms of corporate bonds secured by mortgages, see chapter on MORTGAGES.

424. Bond, with Warrant of Attorney, to Confess Judgment.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of , in the county of , and state of , merchant, am held and firmly bound unto Y. Z., of the city of , and state of , banker, in the sum of dollars [*inserting the penal sum*], good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this day of , .

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named Y. Z., his executors, administrators, or assigns, the just and full sum of dollars, with legal interest for the same, on or before the day of , , then this obligation to be void and of no effect; otherwise, to be and remain in full force and virtue.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

To ANY ATTORNEY of the Court of the state of , or of any other court, there or elsewhere:

WHEREAS, I, A. B., of , by a certain obligation, bearing even date herewith, do stand bound unto Y. Z., of , in the sum of [*penalty*], conditioned for the payment of [*principal sum*], and interest, these presents are to desire and authorize you, or any of you, on the request of said Y. Z., to appear for me, my executors, or administrators, in the said court, or elsewhere, in a proper action there or elsewhere brought, or to be brought against me, my executors or administrators, at the suit of the said Y. Z., his executors, administrators, or assigns, on the said obligation, as of the present, or any antecedent, or subsequent term, or in vacation of the said court, or any other court, there or elsewhere to be held, and confess judgment thereon against me, my executors, or administrators, for the said sum of [*penalty*], debt, besides costs of suit, by *non sum informatus, nihil dicit*, or otherwise, as to you shall seem meet; and for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby, for myself, my executors and administrators, remise, release, and forever quitclaim unto the said

Y. Z., his executors, administrators, or assigns, all and all manner of error and errors, defects and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon, or thereto, or in anywise touching or concerning the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day
of

In presence of

[Signature and seal.]

[Acknowledgment.]

425. Short Form of the Same.

[Insert in the common form of Money Bond, before the signature, the following:] AND I DO FURTHER authorize and empower any attorney, in any court of record in the state of , to appear for me at the suit of the said Y. Z., or his representatives, in an action hereon, and confess judgment against me upon this said bond or obligation [*or*, for so much money borrowed], at any term, or vacation of term, antecedent or subsequent to this date; and to release to the said Y. Z. all errors that may intervene in obtaining said judgment, or in proceeding on the same.

Signed and sealed this day of .

In presence of

[Signature and seal.]

[Acknowledgment.]

426. Collateral Bond for the Payment of Money Already Secured by Mortgage Only.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of , in the county of , and state of , farmer, am [*or*, we, A. B., of, etc., and C. D., of, etc., are] held and firmly bound unto Y. Z., of the town of , in the county of , and state of , merchant [*or*, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of dollars, good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns [*or*, to the said W. X. and Y. Z., their executors, administrators, or assigns]; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators [*or*, we do bind ourselves, our heirs, executors, and administrators, jointly and severally], firmly by these presents. Sealed with my seal [*or*, our seals]. Dated this day of . †

THE CONDITION of this obligation is such, that if the above-bounden A. B., his [*or*, A. B. and C. D., their] heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named Y. Z., his executors, administrators, or assigns, the just and full sum of dollars, on the day of , which will be in the year , being the same sum of money which is secured by the above-bounden A. B. [*or*, by one M. N.], unto the said Y. Z., in and by a certain indenture of mortgage, bearing the date above written, made, or mentioned to be made, between the , of the one part, and the said Y. Z., of the other part, by and upon the several conditions therein mentioned, then this obligation to be void; otherwise, to remain of full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

427. Collateral Bond by Surety, for Payment of Money Already Secured by Bond and Mortgage.

[The penal clause will be as in preceding form to the †, thence continuing thus:]

WHEREAS [here recite the consideration — e. g., thus:] the above-named Y. Z. holds a bond and mortgage made by one M. N., bearing date on the day of , to secure the payment of the sum of dollars, on the day of , which time of payment the said M. N. is desirous to have extended, and the said Y. Z. is willing to extend the same until the day of , upon and in consideration of the above-written obligation, as further security therefor.

NOW, THEREFORE, the condition of the above obligation is such, that if the above-bounden A. B., his heirs [or, A. B. and C. D., their heirs], executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said [etc., stating the substance of the condition of the principal bond as extended], then this obligation shall be void; otherwise, to remain of full force.

In presence of

[Signature and seal.]

[Acknowledgment.]

428. Bond for Payment of an Annual Sum to Two Persons and the Survivor, for Life.

KNOW ALL MEN BY THESE PRESENTS that I, A. B., of the town of , in the county of , and state of , farmer, am [or, we, A. B., of, etc., and C. D., of, etc., are] held and firmly bound unto Y. Z., of the town of , in the county of , and state of , merchant [or, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of dollars, good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns [or, to the said W. X. and Y. Z., their executors, administrators, or assigns]; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators [or, we do bind ourselves, our heirs, executors, and administrators, jointly and severally], firmly by these presents.

Sealed with my seal [or, our seals]. Dated this day of .

THE CONDITION of this obligation is such, that if the above-bounden A. B., his [or, A. B. and C. D., their] heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said W. X. and Y. Z., during their natural lives, and the natural life of the survivor of them, the clear annual or yearly sum of dollars, on the day of , in every year, the first payment thereof to be made on the day of , next ensuing the date above written, and also pay a proportionable part of the said annual or clear yearly sum of dollars, for, or in respect of so many days as shall have elapsed from the last yearly day of payment next preceding the decease of the survivor of them up to the day of the death of such survivor, then the said obligation is to be void; but if default shall be made in payment of the said annual sum, or any part thereof, at any of the times aforesaid, then the said obligation is to remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

429. Bond for Payment of an Annuity for a Term of Years.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of _____, in the county of _____, and state of _____, merchant, am [or, we, A. B., of, etc., and C. D., of, etc., are] held and firmly bound unto Y. Z., widow of W. Z., deceased, of the town of _____, county of _____, and state of _____ [or, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of _____ dollars, good and lawful money of the United States, to be paid to the said Y. Z., her executors, administrators, or assigns [or, to the said W. X. and Y. Z., their executors, administrators, or assigns], for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators [or, we do bind ourselves, our heirs, executors, and administrators, jointly and severally], firmly by these presents.

Sealed with my seal [or, our seals]. Dated this _____ day of _____, 18____

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his [or, A. B. and C. D., their] heirs, executors, or administrators, or any of them, shall yearly and every year, during the term of _____ years, to be computed from [the _____ day of _____ last past before] the day of the date of the above-written obligation, well and truly pay, or cause to be paid, unto the said Y. Z., her executors, administrators, or assigns, the annuity or clear yearly sum of _____ dollars, by even and quarterly [or, half-yearly] portions, paid at or upon the _____ days of the months of _____, in each year, the first payment thereof to begin and be made on the _____ day of _____ next ensuing the day of the date of this obligation, and also pay a proportionable part of the said annuity, or clear yearly payment of _____ dollars, for, or in respect of so many days as shall have elapsed from the last half [or, quarter] yearly day of payment next preceding the decease of the said Y. Z., up to the day of her death, then this obligation is to be void; but if default shall be made in the payment of said annuity, or any part thereof, at any of the times aforesaid, then the said obligation is to remain in full force and virtue.

In presence of _____

[Signature and seal.]

[Acknowledgment.]

430. Bond for Payment of Money Upon Expiration of Apprenticeship, or Upon Marriage.

[Penal clause as in Form 429 to the †, continuing thus:]

WHEREAS, the above-named A. B. hath apprenticed himself to C. D., of _____, with him to dwell and serve as his apprentice, from the _____ day of _____, unto the full end and term of _____ years from thence next ensuing, and fully to be complete and ended, as by the said indenture of apprenticeship fully appears: and

WHEREAS, the above-named Y. Z. hath, before the day of the date of the above obligation, at several times lent to and disbursed for the said A. B. several sums of money, amounting in the whole to the sum of _____ dollars, for which the said Y. Z. is content to take this bond or obligation, payable at the expiration of the apprenticeship of the said A. B., or the day of marriage of the said A. B., whichever shall first happen: NOW, THEREFORE, the condition of this obligation is such, that if the said above-bounden A. B., his heirs, executors, or administrators, or any of them, shall well and truly pay, or cause to be paid, to the said Y. Z., his executors, administrators, or assigns, the just and full sum of _____ dollars, at the end or expiration of the said

apprenticeship of the said A. B., or term of _____ years above mentioned, or on the day of marriage of the said A. B., whichever shall first and next happen to be or come after the date of these presents, then this obligation to be void; otherwise, to remain in full force and virtue.

In presence of _____

[*Signature and seal.*]

[*Acknowledgment.*]

431. Bond or Bill for an Unliquidated Sum.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, merchant, am held and firmly bound to Y. Z., of said place, banker, in all and every such sums and sum of money, as already have been, or hereafter shall or may be paid or advanced by him for me; and all such sums of money, to pay which a liability or engagement has been, or shall, or may be entered into or incurred by him, the said Y. Z., by reason or means of accepting or paying the drafts, bills, or promissory notes of me, the said A. B., or by discounting for me other bills of exchange or promissory notes, or by affording to me other pecuniary assistance, together with lawful interest upon the same, from the time or respective times of paying or advancing the same; and also the commissions and other charges according to lawful custom, to be paid to the said Y. Z., his executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this _____ day of _____.

In presence of _____

[*Signature and seal.*]

[*Acknowledgment.*]

432. By Debtors to Pay According to a Composition Deed.

[*The penal clause will be as in Forms 413 or 415 to the †, thence continuing thus:*]

WHEREAS, the above-named Y. Z. has, with other creditors of the above-bounden A. B. [and C. D.], agreed to take _____ cents on a dollar, as a composition in full for every dollar owing him by the said A. B. [and C. D.], which is to be paid in manner following—viz., _____ cents on the dollar, a part thereof, on the _____ day of _____, _____, and _____ cents on the dollar more, the residue thereof, on the _____ day of _____, _____; and the said A. B. has [or, A. B. and C. D., have] agreed to give bond to every of said creditors, for the said _____ cents on the dollar, to be paid at the times aforesaid; and WHEREAS, there was due and owing to the said Y. Z. at the time of executing said deed of composition, the just sum of _____ dollars: NOW, THE CONDITION of the above obligation is such, that if the said A. B., his [or, A. B. and C. D., their] heirs, executors, administrators, and assigns, or any of them, shall and do well and truly pay to the said Y. Z., his executors, administrators, or assigns, the just and full sum of _____ dollars, part of the said debt, on [the day of the first payment], and the further sum of _____ dollars, residue of the said debt, on [the day of the next payment, etc.], then this obligation shall be void and of no effect; but if the said A. B. shall make default of payment of either of the said sums, at the said times respectively, then this obligation shall be and remain in full force and virtue.

In presence of _____

[*Signatures and seals.*]

[*Acknowledgment.*]

II. BOTTOMRY AND RESPONDENTIA BONDS.

These are bonds for payment of money, but are presented separately for greater convenience. A bottomry bond is given where money is borrowed for the purposes of a voyage, upon a mortgage of the ship, and its accruing freight, accompanied usually with the personal obligation of the borrower to repay it, but upon condition that the loss of the ship exonerates the borrower. To such a loan the usury laws do not apply, and the lender may stipulate for interest beyond the lawful rate. Such a bond is termed a bottomry bond, because loan is risked on the hull or bottom of the ship. The owner is responsible only to the extent of the fund pledged in his possession.

Respondentia is a contract similar to *bottomry*, except that the loan is made upon the chance of the safe arrival of the cargo.

433. Bottomry Bond.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., master [or, owner, or, master and owner] of the ship or vessel called the *Mary*, now lying at the port of _____, am held and firmly bound unto Y. Z., of the city of _____, in the county of _____, and state of _____, merchant [or, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of _____ dollars, good and lawful money of the United States [or other currency in which payment is to be made], to be paid to the said Y. Z., his executors, administrators, or assigns [or, to the said W. X. and Y. Z., their executors, administrators, or assigns], for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, and furniture [and freight], firmly by these presents.

Sealed with my seal. Dated this _____ day of _____, . . . †

WHEREAS, the above-bounden A. B. has borrowed, taken up, and received of the said Y. Z., the full and just sum of _____ dollars, which sum is to run at bottomry on the body, tackle, apparel, and furniture [and freight] of the said ship or vessel [here state the voyage for which the loan is made—e. g., thus:] from the port or road of M., on a voyage to the port of N., having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage, at the rate or premium of _____ per cent. for the voyage [or, at the rate or premium of _____ per cent. for every calendar month the said ship or vessel shall be out on said voyage, and so in proportion for a less time than a month], in consideration whereof the usual risks of the seas, rivers, enemies, fires, pirates, etc., are to be on account of the said Y. Z.: And WHEREAS for the further security of the said Y. Z., the said A. B. has agreed to and does by these presents mortgage and assign over to the said Y. Z., his executors, administrators, or assigns, the said ship or vessel [and her freight], together with all her tackle, apparel, and furniture; and it is hereby declared that the said ship or vessel and appurtenances [and her freight], are thus assigned over for the security of the bottomry taken up by the said A. B., and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

NOW THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or either of them, shall and do well and truly pay, or cause to be paid, unto the said Y. Z., or to his attorneys in _____, legally authorized to receive the same, or to his executors, administrators, or assigns, the full and just sum of _____ dollars, being the

principal of this bond, together with the premium which shall be come due thereupon, at or before the expiration of days after the safe arrival of the said ship or vessel at her moorings in the harbor of N., or, in case of the loss of the said ship or vessel, such an average as by custom shall have become due on the salvage, then this obligation is to be void and of no effect; otherwise, to remain in full force and virtue. Having signed three bonds of the same tenor and date, either one thereof being accomplished, the other two are to be void and of no effect.

In presence of

[Signature and seal.]

[Acknowledgment.]

434. Bottomry Bond by a Part Owner, Signing as Attorney for Other Owner.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. [master, and] one-third owner of the ship or vessel Mary, now lying in the port of , for myself, and C. D., who owns the other two-thirds of said ship or vessel, by me, are held and firmly bound unto Y. Z., of the city of , in the county of , and state of , merchant [or, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of dollars, good and lawful money of the United States [or other currency in which payment is to be made], to be paid to the said Y. Z., his executors, administrators, or assigns [or, to the said W. X. and Y. Z., their executors, administrators, or assigns], for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this day of , 18 . †

[Second paragraph as in form preceding.]

NOW, THEREFORE, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, or administrators, or either of them, shall well and truly pay, or cause to be paid, unto the said Y. Z., or to his [or, to W. X. and Y. Z., or to their] attorneys, at , legally authorized to receive the same, or to the executors, administrators, or assigns of said W. X. [and Y. Z.], the just and full sum of dollars, being the principal of this bond, together with the premium which shall become due thereon, at or before the expiration of days after the arrival of the said ship or vessel at the port of ; or, in case of the loss of the said ship, such an average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise, to remain in full force and virtue. Having signed three bonds of the same tenor and date, either one thereof of which being accomplished, the other two are to be of no effect.

In presence of

A. B. [SEAL.]

C. D. by A. B. [SEAL.]

[Acknowledgment.]

435. Respondentia Bond.

[The penal clause will be as in Form 433 to the †, thence continuing thus:]

WHEREAS, the above-bounden A. B. has [or, A. B. and C. D. have] borrowed, taken up, and received of the said Y. Z. the full and just sum of dollars, which sum is to run at respondentia, on the said ship or vessel [here state the voyage for which the loan is made], at the rate or premium of per cent. for the voyage [or, at the rate of per cent. for every calendar month

the said ship or vessel shall be out on the said voyage, and so in proportion for a less time than a month]; in consideration of which, the usual risks of the seas, rivers, enemies, fires, pirates, etc., are to be on the account of the said Y. Z., and WHEREAS, for the further security of the said Y. Z., the said A. B., for and on account of the owners, their executors, administrators, and assigns, has agreed to, and does by these presents mortgage and assign over to the said Y. Z., the several goods, wares, and merchandise laden and to be laden on the said ship or vessel; which said goods, wares, and merchandise, with their produce, are thus mortgaged and assigned over, for the security of the respondentia taken up by the said A. B., and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon:

NOW THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said Y. Z., or to his attorneys [or, to W. X. and Y. Z., or to their attorneys] at _____, legally authorized to receive the same, or to the executors and administrators of the said [W. X. and] Y. Z., the just and full sum of _____ dollars, being the principal of this bond, together with the premium which shall become due thereupon, at the expiration of _____ months after the safe arrival of the said ship or vessel at her moorings in the port of _____, or in case of the loss of the said ship or vessel, such average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise, to remain in full force and virtue. Having signed three bonds of the same tenor and date, either one thereof being accomplished, the other two are to be of no effect.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

III. BONDS FOR THE PERFORMANCE OR NONPERFORMANCE OF VARIOUS ACTS.

A bond conditioned for the performance of a specific act is broken by failure to perform it; but where the condition is to indemnify the obligee from damage from a nonperformance, there is no breach until the obligee has been damaged by being compelled to pay, or otherwise.

In bonds with conditions for the performance of duties preceded by recitals of what the duties are, general terms in the condition are restrained by the recitals. The recitals, therefore, should be carefully drawn, so as to be as general as the condition is intended to be.

[For arbitration bonds conditioned for the performance of awards, see chapter on ARBITRATION AND AWARD.]

436. Bond for the Performance of Covenants.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of _____, in the county of _____, and state of _____, farmer, am [or, we, A. B., of, etc., and C. D., of, etc., are] held and firmly bound unto Y. Z., of the town of _____, in the county of _____, and state of _____, merchant [or, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of _____ dollars, good and lawful money of the United States, to be paid to the said Y. Z., his [or, to the said W. X. and Y. Z., their] executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators

[or, we do bind ourselves, our heirs, executors, and administrators, jointly and severally], firmly by these presents.

Sealed with my seal [or, our seals]. Dated this day of , . *

THE CONDITION of the above obligation is such, that if the above-bounded A. B., his [or, A. B. and C. D., their] heirs, executors, administrators, and assigns, or any of them, do and shall well and truly in all things perform, fulfil and keep each and all of the clauses, covenants, conditions and agreements specified and contained in a certain [*here designate the instrument — e. g., thus:*] indenture of lease, bearing even date with the above-written obligation, and made between A. B. of the one part and Y. Z. of the other part, which, on the part and behalf of the said A. B., his [or, A. B. and C. D., their] heirs, executors, administrators, or assigns, ought to be performed, fulfilled, and kept, according to the true intent and meaning of the same, then the above obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

437. Bond that a Warranty Shall be Kept.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of , in the county of , and state of , farmer, am [or, we, A. B., of, etc., and C. D., of, etc., are] held and firmly bound unto Y. Z., of the town of , in the county of and state of , merchant [or, unto W. X., of, etc., and Y. Z., of, etc.], in the sum of dollars, good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns [or, to the said W. X. and Y. Z., their executors, administrators, or assigns]; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators [or, we do bind ourselves, our heirs, executors, and administrators, jointly and severally], firmly by these presents.

Sealed with my seal [or, our seals]. Dated this day of , . *

WHEREAS, the said A. B. [and C. D.], for the consideration of dollars to him [or, them] in hand paid, or secured to be paid, did make, finish, and sell unto the said Y. Z. [or, W. X. and Y. Z.] a steam-engine, with boilers and appurtenances [*or other article as the case may be*], which he has delivered and placed in the factory of said Y. Z., which he has and hereby does, for himself, his heirs, executors, and administrators [or, which they have and hereby do, for themselves, their heirs, executors, and administrators], warrant to be good in each and every respect, and to remain good and sufficient for the space of years. †

NOW, THEREFORE, THE CONDITION of the above obligation is such, that if the said steam-engine, boilers, and appurtenances, or any part thereof, shall, within the time aforesaid, prove defective or insufficient, in the opinion of any three competent and disinterested mechanics or engineers, then this obligation is to be in full force; otherwise, to be void.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

438. Bond for Repayment of Purchase Money, on a Breach of Warranty.

[*As in preceding form to the †, thence continuing thus:*]

NOW, THEREFORE, THE CONDITION of this obligation is such, that if the said steam-engine, boilers, and appurtenances, shall so be and remain for the time

aforesaid; or in case the same, or either of them, shall, within the time aforesaid, prove defective or insufficient, in the opinion of any three competent mechanics, or engineers, who shall be disinterested, if in such case the above-bounden A. B., his [or, A. B. and C. D., their] heirs, executors, and administrators, or any of them, shall well and truly repay, or cause to be repaid, unto the said W. X. and his [or, W. X. and Y. Z., their] heirs, executors, and administrators, the said sum of dollars, with legal interest from the day of , upon the redelivery to him, or them, at aforesaid, of such defective or insufficient engine, boiler, and appurtenances, then this obligation is to be void; otherwise, to remain of full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

439. Bond for a Deed, by Vendor to Purchaser.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of , in the county of , and state of , farmer, am held and firmly bound unto Y. Z., of the town of , in the county of , and state of , merchant, in the sum of dollars, good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal. Dated this day of , *

WHEREAS, the above-bounden A. B. has this day agreed to sell to the said Y. Z. the following-described tract of land in the county of , in the state of , to wit [describing it], on condition that the said Y. Z. shall pay the sum of dollars, in manner following—to wit [stating time, etc.], for which the said Y. Z. has given his promissory note.

NOW, THE CONDITION of this obligation is such, that if said Y. Z. shall pay said note at maturity, and shall in the meantime pay all taxes on said land, and the said A. B. shall, on the completion of said payments, make, execute, and deliver, or cause to be made, executed, and delivered [here state the conveyance to be given—e. g., thus:] a good and sufficient warranty deed to the said Y. Z. for said tract of land, † then this obligation to be void; otherwise, to remain in full force and virtue. AND IT IS EXPRESSLY AGREED by and between said parties, that time is of the essence of this contract, and that in the event of the nonpayment of said sum of money, or any part thereof, promptly at the time herein limited, that then the said A. B. is absolutely discharged at law and in equity from any and all liability to make and execute such deed, and may treat the said Y. Z. as a tenant holding over after the termination, or contrary to the terms of his lease; or if he prefer to do so, may enforce the payment of said note.

In presence of

[Signature and seal.]

[Acknowledgment.]

440. Bond with Surety, to Execute a Conveyance.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the town of , in the county of , and state of , farmer, and C. D., of, etc., are held and firmly bound unto Y. Z., of the town of , in the county of , and state of , merchant, in the sum of dollars, good and

lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of , *

THE CONDITION of the above obligation is such, that if the above-bounden A. B., on or before the day of next, or, in case of his death before that time, if the heirs of the said A. B. within months after his decease, if such heirs shall then be of full age, or, if within age, then within months after such heirs shall be of full age, do and shall, upon the reasonable request, and at the proper cost and charges in the law of the said Y. Z., his heirs or assigns, make, execute, and deliver, or cause so to be to the said Y. Z., his heirs or assigns, or to such person or persons as he or they shall nominate and appoint, and to such uses as he or they shall direct [*here state the conveyance stipulated for — c. g., thus:*] all and every such deed or deeds, conveyance or conveyances whatsoever, which shall be needful for conveying and confirming unto the said Y. Z., his heirs, or assigns, a good, absolute, and indefeasible estate of inheritance in fee simple, clear of all incumbrances, except a mortgage made by A. B. for \$1,000, and due years from date [*or thus: a good and sufficient conveyance in fee simple, with the usual covenants, or thus: a good and sufficient warranty deed, in fee simple, free from all incumbrance, and with full covenants*], of the following described premises — to wit: all [*describing premises*], † then the above obligation to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

441. Bond to Give a Quitclaim.

[*If with surety, the penal clause will be as in Form 440; if without, as in Form 437 to the *, and thence continue thus:*]

THE CONDITION of the above obligation is such, that if the above-bounden A. B. shall well and truly make, execute and deliver to the said Y. Z. a deed of release and quitclaim of said A. B.'s interest in [*designating the property*], and shall suffer and permit the said Y. Z., his heirs, or assigns, to peaceably occupy and possess said interest, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

442. Bond that a Third Person Shall Convey on Coming of Age.

[*If with surety, the penal clause may be as in Form 440; if without surety, as in Form 437 to the *, thence continuing with a recital of the case — e. g., thus:*]

WHEREAS, the above-bounden A. B. and M. N. are the heirs [*or, devisees*] of one deceased, and as such heretofore seized of certain premises in the town of , aforesaid, described as follows [*description*]; and WHEREAS, the above-named Y. Z. has agreed with the said A. B. and M. N. for the purchase of the said premises, for the sum of dollars; but the said M. N., not being yet of age, cannot now join in conveying the same to the said Y. Z.; and, WHEREAS, the said Y. Z., at request of the above-bounden A. B.

[*and name surety, if any*], and on his [*or, their*] promise and undertaking that the said M. N. will, as soon as he shall have attained the age of twenty-one years, at the proper costs and charges of the said Y. Z., convey to the said Y. Z., his heirs and assigns, his undivided interest in and part of the said premises, has paid into the hands of the said A. B. the whole of the said purchase money; and the said A. B., by his deed of even date herewith, has conveyed his undivided interest in and part of the said premises, to the said Y. Z., his heirs and assigns: NOW THE CONDITION of this obligation is such, that if the said M. N. shall within a reasonable time after he shall have attained the said age of twenty-one years, at the proper costs and charges of the said Y. Z., convey unto the said Y. Z., his heirs and assigns, by such deeds and conveyances as the counsel of the said Y. Z. shall advise, his undivided interest in and part of the said premises, and that without any consideration to be paid him by the said Y. Z. for so doing; and also, if, and in case the said A. B. [*and name also surety, if any*], his [*or, their*] heirs, executors, or administrators, shall in the meantime, and until the said M. N. shall have executed such conveyances as aforesaid, save, defend, keep harmless, and indemnified the said Y. Z., his heirs, executors, and administrators, and the said premises, and the rents, issues, and profits thereof, of and from all claims and demands to be made thereto, by or on the part and behalf of the said M. N., † then this obligation to be void; otherwise, to remain of full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

443. Condition for Quiet Possession Meantime.

[*Insert in either preceding form at the †. the following:*] And also if the said A. B., his heirs, executors, administrators, and assigns, do and shall, until such conveyance and assurance be made and executed as aforesaid, permit and suffer the said Y. Z., his heirs and assigns, peaceably and quietly to have, receive, and take to his and their own proper use and uses, the rents and profits of all and singular the premises, and every part and parcel thereof, without any manner of disturbance or hindrance of the said A. B., his heirs, executors, administrators, or assigns, or any of them, or of any other person or persons whatsoever, by his or their, or any of their means, or procurement, then, etc.

444. Bond to Execute an Assignment.

[*If with surety, the penal clause will be as in Form 440, if without surety, as in Form 437 to the *, thence continuing thus:*]

THE CONDITION of the above obligation is such, that if the above-bounden A. B., his executors, administrators, or assigns, on or before the day of next, shall, upon the reasonable request, and at the proper cost and charges of the said Y. Z., his heirs or assigns, make, execute, and deliver, or cause so to be, to the said Y. Z., his heirs or assigns, or to such person or persons as he or they shall nominate and appoint, and to such uses as he or they shall direct, a good and sufficient assignment of all such estate and interest as he, the said A. B., now hath in the lands and tenements of M. N. at , then this obligation to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

445. Bond to Pay Off and Cancel a Mortgage.

[If with surety, the penal clause will be as in Form 440; if without surety, as in Form 437, to the *, and then recite the cause of giving the bond — e. g., thus, where it is given by a vendor of the land to the purchaser:]

WHEREAS, the above-bounden A. B., and C. B., his wife, heretofore agreed to convey, and have this day conveyed, to the said Y. Z., certain lands in

[*briefly designating the premises*], by a full warranty-deed; and, WHEREAS, said premises are subject to the payment of a mortgage, bearing date the day of , , executed by the said , and , his wife, to , of the city of , and county of , for the purpose of securing the payment of the sum of dollars, in years from the day of the date thereof, with semi-annual interest, as secured by the condition of a bond, of like date therewith, executed by the said to the said , which said mortgage is a lien upon the premises aforesaid, and was recorded in the office of the clerk of the county of , on the day of , , at pages and of book of mortgages, at o'clock, m., and upon which there is now remaining due and unpaid the said principal sum of dollars, with interest from the day of , , last past; which sum the above-bounden A. B. agreed to pay, and to satisfy and cancel of record said mortgage.

Now, THEREFORE, THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or either of them [or, the above-bounden A. B. and C. D., or either of them, or their or either of their heirs, executors, or administrators], shall well and truly pay, or cause to be paid, unto the said [*mortgagee*], or his executors, administrators, or assigns, all such sum and sums of money as are or may hereafter become due on the said bond and mortgage, executed by the said A. B. and his wife as aforesaid, and forever satisfy and discharge the same, saving the said Y. Z., his heirs, executors, administrators, and assigns, harmless of and from all and all manner of costs, charges, and expenses in the premises, then the above obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

446. Bond by Vendor to Deliver Lost Title Deeds when Found, and to Indemnify Against Incumbrances.

[If with surety, the penal clause will be as in Form 440; if without surety, as in Form 437 to the *, continuing as follows:]

WHEREAS, certain title deeds and evidences of title to premises heretofore occupied by the above-bounden A. B., in the village of , in the state of , have been lost or mislaid, not having been recorded, and the said A. B., upon conveying said premises to Y. Z., by deed of even date with these presents, agreed with him to save harmless, and keep indemnified the said Y. Z., his heirs, executors, administrators, and assigns, against all persons whatsoever, claiming any right or title to the said premises, or any part thereof, and all costs and charges attending the same, until the said title deeds and evidences of title shall appear to be found; and also, that in case the said title deeds and evidences to the said premises should at any time hereafter be found, then that the same shall be delivered to the said Y. Z., his heirs or assigns, whole and uncanceled: Now, THE CONDITION of this obligation is such, that if the said A. B., his heirs, executors, or administrators, do and shall from time to

time, and at all times hereafter until the said title deeds and evidences, forming a complete title to the said premises, shall be found, save harmless, and keep indemnified the said Y. Z., his heirs, executors, administrators, and assigns, of, from, and against all mortgages and other charges and incumbrances, affecting the said premises, and against all and every person and persons whatsoever, claiming any estate, right, or title of, in or to the same, or any part thereof; and, if such title deeds and evidences, or any of them, shall at any time hereafter be found, if then the same shall be delivered up to the said Y. Z., his heirs or assigns, in whole and uncanceled, without fraud or other delay, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

447. Bond by Part Owner of a Ship, on Selling the Same, to Procure Bill of Sale from the Other Part Owner.

[The penal clause may be as in Form 440 to the *, and thence continue thus:]

WHEREAS, the above-bounden A. B. has [or, A. B. and C. D. have], by bill of sale of even date herewith, sold and assigned unto the said Y. Z., his share [or, their several shares] in the ship or vessel called the Mary, and the appurtenances; and, whereas, M. N., of _____, is owner of the other _____ part of the said ship or vessel, but, he being absent, the said A. B. has [or, A. B. and C. D. have] undertaken with the said Y. Z. that the said M. N. shall duly execute a like bill of sale, or otherwise, by some other deed, sufficiently convey his said _____ part of the said ship, with the appurtenances, to the said Y. Z., and thereupon the said Y. Z. has paid to the said A. B. the sum of _____ dollars, being the purchase money for the said _____ part, to be conveyed by said M. N.

NOW, THEREFORE, THE CONDITION of the above obligation is such, that if the said M. N., his executors, administrators, or assigns, shall within months after the date above written, duly sign, seal, and execute such bill of sale to the said Y. Z., or otherwise duly and sufficiently convey the said _____ part of the said ship, with the appurtenances, to the said Y. Z.; and if, in the meantime, the said Y. Z., his executors, administrators, or assigns, shall quietly hold the said _____ part of the said ship, with the appurtenances belonging to the said M. N., without any denial or interruption by the said M. N., or any other person or persons whatsoever, then this obligation to be void and of no effect; otherwise, to be and remain of full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

448. Bond of Tenant with Surety, for the Payment of Rent.

[The penal clause may be as in Form 440 to the *, and thence continue thus:]

WHEREAS, the above-named Y. Z., by indenture of lease bearing even date with the above-written obligation [or, bearing date the _____ day of _____], for the consideration in the said lease mentioned, hath demised to the above-bounden A. B., certain premises with the appurtenances, situate in _____, for the term of _____ years from thence next ensuing [determinable, nevertheless, at the end of the first _____ years of the said term, if the said _____, his executors, administrators, or assigns, shall give _____ months' notice thereof in manner therein mentioned], at and for the yearly rent of _____ dollars, payable [quarterly], as therein expressed.

NOW, THE CONDITION of this obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, or administrators, or any of them, shall, during the continuance of the said lease, well and truly pay, or cause to be paid, to the said Y. Z., his executors, administrators, or assigns, the yearly rent or sum of dollars in equal quarter-yearly payments, on the days of [designating the months], or within days next after every of the said quarter-days, according to the true intent and meaning of the said recited lease [subject, nevertheless, to the determination thereof, in manner as aforesaid], then the above-written obligation is to be void; but if default shall be made in any of the said quarterly payments, then this obligation shall remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

449. Bond of Tenant with Surety, for the Surrender of Premises in Good Condition, etc.

[The penal clause may be as in Form 440 to the *, and thence continue thus:]

WHEREAS, the above-named Y. Z., by indenture of lease bearing even date with the above-written obligation [or, bearing date the day of], for the consideration in the said lease mentioned, demised to the above-bounden A. B., certain premises, with the appurtenances, situate in , for the term of years from thence next ensuing [determinable, nevertheless, at the end of the first years of the said term, if the said lessee, his executors, administrators, or assigns, shall give months' notice thereof in manner therein mentioned], at and for the yearly rent of dollars, payable [quarterly], as therein expressed.

NOW, THEREFORE, THE CONDITION of this obligation is such, that if the said A. B., his executors, administrators, or assigns, at his or their own proper costs and charges, shall, during the said lease, always maintain, or at the expiration or other sooner determination of the term thereby granted, shall put or cause to be put the said [mill], and all things belonging thereunto, into the same form, order, and manner as they now are, and fitting to be used for a [grist-mill], as the same now is, and shall and do deliver up the same, in such order and manner as aforesaid, at the expiration or determination of the said term, with all the materials, utensils, and things which are now in, about and belonging thereto, unto the said Y. Z., his heirs, executors, administrators, or assigns, in as good repair and condition as they now are, reasonable use and wear and tear thereof [and damages by the elements] in the meantime only excepted, then this obligation is to be void; otherwise, to be in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

450. Bond with Surety, to Deliver to Sheriff Goods Levied on and Left in Defendant's Possession.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the town of , in the county of , and state of , farmer, and C. D., of the same place, merchant, are held and firmly bound unto Y. Z., the sheriff of the county of , in the sum of dollars, good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or

assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of , .

WHEREAS, the above-named Y. Z., sheriff of the said county of , by virtue of an execution [*or, a writ of fieri facias*], issued out of the court of , for the , to him directed and delivered, has seized, and taken in execution the following goods [*describing them*], as the property of the above-bounden A. B., defendant in the said execution [*or, writ of fieri facias*].

NOW, THE CONDITION of this obligation is such, that if the above-bounden A. B. or C. D., or their executors, administrators, or assigns, or any of them, shall well and truly deliver up, or cause to be delivered up, to the said sheriff all the above-mentioned goods, whenever required by the said sheriff, in a sound and in every way as good a situation and condition as when the above-mentioned goods were first levied on by the said sheriff, and that too without fraud or other delay, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

451. Bond to Executors or Administrators with Will Annexed, to Refund Legacy if Assets Prove Insufficient.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of , in the county of , and state of , am [*or, if with surcty, say, we, A. B., of, etc., and C. D., of, etc., are*] held and firmly bound unto W. X. and Y. Z., of , in said state, executors of the last will of M. N., deceased [*or, administrators with the will annexed of M. N., deceased*], late of the city of , and state of , in the sum of dollars [*inserting the penal sum*], good and lawful money of the United States, to be paid to the said executors [*or, administrators*], as aforesaid, their survivor or survivors, or their or his successors or assigns, for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators [*or, we do bind ourselves, our heirs, executors, and administrators, jointly and severally*], firmly by these presents.

Sealed with my seal [*or, our seals*]. Dated this day of , .

WHEREAS, M. N. [father of the said A. B.], by his said last will, bearing date the day of , gave and bequeathed to the said A. B. a legacy of dollars [*or, shares of the capital stock of the bank, or otherwise, as the case may be*], * [*recite issue of letters testamentary, and also demand and request of payment*], which the said W. X. and Y. Z. have paid, transferred, and delivered [*or, are about to pay, transfer, and deliver*] to the said A. B.

NOW, THE CONDITION of this obligation is such, that if the said legacy, or any part thereof, shall at any time be necessary to discharge any debt, liability, or legacy, which the said executors [*or, administrators*] shall not have other assets to pay, then, and in such case, if the said A. B., his heirs, executors, or administrators shall return the said legacy, or such part thereof as shall appear to be necessary for the payment of such debts or liabilities, or for the payment of a proportionate part of such legacies, and the costs and charges, if there be any, incurred by reason of the payment of the said A. B.; or, if the probate of the will of the said deceased be revoked, or the will declared void,

wholly or as to such legacy, then, and in such case, if the said A. B. shall return the whole of the legacy [with interest] to the said W. X. and Y. Z., as executors, their survivors, or their or his successors or assigns, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

452. Bond to Executors, etc., on Payment of a Legacy to a Minor.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, am held and firmly bound unto W. X. and Y. Z., of _____, in the said state, executors of the last will of M. N., deceased [or, administrators with the will annexed of M. N., deceased], late of the city of _____, and state of _____, in the sum of _____ dollars [inserting the penal sum], good and lawful money of the United States, to be paid to the said executors [or, administrators] as aforesaid, their survivor or survivors, or their or his successors or assigns, for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the _____ day of _____, _____.

WHEREAS, the said M. N., by his said last will, bearing date the _____ day of _____, _____, gave and bequeathed to C. B., the minor son of the above-bounden A. B., a legacy of _____ dollars [or otherwise, as the case may be], which the said W. X. and Y. Z., at the request of said A. B., have paid, transferred, and delivered [or, are about to pay, transfer, and deliver] to the said A. B., for the use and benefit of the said legatee, his minor son.

Now, THE CONDITION of this obligation is such, that if the said A. B. shall pay the said legacy to the said C. B., his son, when he shall attain the age of twenty-one years; and if the said C. B., within _____ months after his attaining such age, or his executors or administrators, or personal representatives, upon his decease before attaining such age, shall execute and deliver to the said W. X. and Y. Z., as executors [or, administrators] as aforesaid, their survivor or successors, a sufficient release and discharge of and from the said legacy so paid as aforesaid, and also if the said A. B., his executors and administrators, do and shall, at all times hereafter, well and sufficiently save and keep harmless and indemnified the said W. X. and Y. Z., their heirs, executors, administrators, survivors, and successors, of and from all actions and demands, for, about, or concerning the said legacy in anywise, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

453. Bond to Maintain Two Persons for Life.

[If with surety, the penal clause will be as in Form 440; if without surety, as in Form 437, to the *, and thence continue thus:]

WHEREAS, the above-bounden A. B., in consideration of the sum of _____ dollars, to him in hand paid by the above-named Y. Z. [or, a conveyance of land this day made by said Y. Z., and W. Z., his wife], has agreed to maintain them, the said Y. Z. and W. Z., for life, Now, THEREFORE, the condition of this obligation is such, that if the said A. B., his executors or administrators,

shall from time to time, and at all times hereafter during the natural life of the said W. Z. and Y. Z., and the survivor of them, well and sufficiently support and maintain, and clothe, and in all respects suitably care and provide them, and each of them, in the house of said A. B. [*or*, and shall allow the said Y. Z., and W. Z., his wife, and the survivor of them, the sole use of the room which they now occupy on the premises], and also shall pay to them, during their joint lives, on the day of , in each year, the clear yearly sum of dollars, and to the survivor of them, during his or her life, the clear yearly sum of dollars, on the like days, then this obligation is to be void; otherwise, to remain in full force and virtue. PROVIDED, HOWEVER, that the said W. Z. and Y. Z. shall not refuse to reside in the county of , aforesaid, except such refusal be occasioned by inability to obtain comfortable and sufficient board, lodging, and maintenance in the said county.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

454. Bond to Marry or to Pay a Sum of Money.

[*If with surety, the penal clause will be as in Form 440; if without, as in Form 437 to the *, and thence continue thus:*]

THE CONDITION of the above obligation is such, that if the above-bounden A. B. do, on or before the day of , espouse and lawfully marry W. Z., daughter of the said Y. Z., if the said W. Z. will thereunto assent, and the laws of this state [*or*, commonwealth] will permit the said marriage to be consummated; or if it shall happen that the said A. B. shall not marry her as aforesaid, then if the said A. B. shall well and truly pay, or cause to be paid, unto the said W. Z., her executors, administrators, and assigns, the sum of dollars, on the day of next ensuing the said day of , above mentioned and limited for the said marriage, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

455. Bond to Contribute to the Support of an Illegitimate Child.

[*If with surety, the penal clause will be as in Form 440; if without surety, as in Form 437, to the *, and thence continue thus:*]

WHEREAS, the said Y. Z. has made oath before M. N., a justice of the peace in and for the said town [*or*, county] of , that the above-bounden A. B. is the father of a male [*or*, female] bastard child, of which she has lately been delivered, and the said A. B. has thereupon agreed to assist the said Y. Z. in the support and maintenance of the said child:

NOW, THEREFORE, THE CONDITION of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them [*or*, the above-bounden A. B. and C. D., or either of them, or their or either of their heirs, executors, or administrators], shall and do well and truly pay to the said Y. Z., her executors, administrators, or assigns, towards the support and maintenance of the said child, the sum of dollars and cents per week, for each and every week, from the day of , 18 , during the term of years, if said child shall live so long, then, etc. [*as above.*]

456. Bond to Serve in Consideration of the Payment of a Debt.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in consideration of the sum of _____, to me in hand paid by Y. Z., of _____, have bound myself, and by these presents do bind myself, a servant unto the said Y. Z., to serve him, the said Y. Z., his executors and administrators [and assigns], for the space of _____ months and _____ days from the day of the date hereof; and I do covenant so to serve faithfully during the said time; and so to serve at the rate of _____ dollars per month for all such moneys as the said Y. Z. hath undertaken, or shall undertake, and be obliged to pay at my request, for me and on my account, he, the said Y. Z., finding and providing for me during the said time, in board, lodging, and washing, as is customary for servants.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____

In presence of _____

[Signature and seal.]

[Acknowledgment.]

457. Bond by a Father for Service of Apprenticeship.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of _____, in the county of _____, and state of _____, farmer, am held and firmly bound unto Y. Z., of the town of _____, in the county of _____, and state of _____, blacksmith, in the sum of _____ dollars [*inserting penal sum*], good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated this _____ day of _____, 18____.

WHEREAS, C. B., son of the above-bounden A. B., by indenture of apprenticeship, bearing even date with the above-written obligation, has been apprenticed to the above-named Y. Z., with him to dwell and abide, from the day of the date thereof unto the full end and term of _____ years thence next ensuing, as by the said indenture more fully appears. NOW, THE CONDITION of this obligation is such, that if the said C. B. shall well and truly serve and dwell with the said Y. Z. after the manner of an apprentice, during all the said term of _____ years, according to the true intent and meaning of the said indenture; and if the said C. B. shall not, during said time, detain, convert, waste, embezzle, make away or lend, without his master's order or privity, any goods and chattels of the said Y. Z., his executors or administrators, but shall behave himself honestly and obediently towards the said Y. Z., his executors and administrators, as a good and dutiful apprentice ought to do, during the said term [*or may provide for the obligor reimbursing, as in the following form, last clause*], then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of _____

[Signature and seal.]

[Acknowledgment.]

458. Bond for Clothing and in Sickness Maintaining an Apprenticeship, and for His Fidelity.

[*The penal clause will be as in the preceding form to the §, and thence continue thus:*]

WHEREAS, C. B. [son of the above-bounden A. B.], by an indenture bearing even date with the above obligation, has been apprenticed to the above-named Y. Z. for the term of _____ years, from the date hereof, as by the said indenture

appears; and, WHEREAS, the said Y. Z. accepted of the said C. B. as his apprentice on the above-bounden A. B. agreeing to find and provide for the said C. B. [his son] all and all manner of wearing apparel and washing during his said apprenticeship, and in case of sickness, proper diet, lodging, attendance, medicines, and medical advice: NOW, THE CONDITION of this obligation is such, that if the above-bounden A. B., his executors or administrators, or any of them, shall at all times hereafter during such apprenticeship, at his and their own proper costs and charges, find and provide, or cause to be found and provided, for the said C. B., all and all manner of wearing apparel whatsoever, and washing, fit and convenient for the said C. B.; and, in case the said C. B. shall at any time during his said apprenticeship be rendered incapable, by sickness or otherwise, of performing his duty as an apprentice, shall as often and so long as such shall be the case, at his and their own proper costs and charges, find and provide for the said C. B., fit and convenient diet, lodging, attendance, medicines and medical advice, and thereof and therefrom, and from the covenants in the said indenture of apprenticeship contained relating thereto, shall save, keep harmless, and indemnified the said Y. Z., his executors and administrators, and every of them; and also in case the said C. B., at any time during his said apprenticeship, shall detain, convert, and embezzle, make away or lend, without his said master's order or privy, any money, goods, wares, merchandise, or other things appertaining to the said Y. Z., his executors or administrators, then, if in such case the said A. B. shall always, within days next after notice thereof to him or them, make sufficient recompense, payment, and satisfaction to the said Y. Z., his executors or administrators, for the same, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

459. Bond of Master to Discharge an Apprentice Before the Expiration of His Term.

[The penal clause will be as in Form 457 to the †, thence continuing thus:]

WHEREAS, W. Z., son of the above-named Y. Z., by an indenture of apprenticeship, bearing even date berewith, has been apprenticed to the above-bounden A. B., to serve him as an apprentice from the date thereof for and during the term of years, as by the said indenture will appear; and, WHEREAS, previous to the execution of the said indenture of apprenticeship, it was agreed between the said Y. Z. and the above-bounden A. B., that the said W. Z. should be discharged from his said apprenticeship at the expiration of the first years of the said term of years: NOW, THE CONDITION of this obligation is such, that if the said A. B., his executors or administrators, shall at the expiration of the first years of the said apprenticeship term of years, release and discharge the said W. Z., of and from his said service and apprenticeship, and deliver up the said indenture of apprenticeship to be canceled, and shall permit and suffer the said W. Z. peaceably and quietly to have and enjoy the remainder of his said apprenticeship term of years, for his own benefit and advantage, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

460. Bond to Indemnify a Master for Discharging an Apprentice.

[The penal clause will be as in Form 457 to the †, thence continuing thus:]

WHEREAS, C. B., son of the said A. B., by an indenture of apprenticeship, bearing date on or about the day of , was apprenticed unto the above-named Y. Z., to serve him as an apprentice for the space of years from the date of the said indenture, as by the said indenture of apprenticeship will appear; and, WHEREAS, the said Y. Z., as well at the desire of the said C. B., as with the consent and approbation of the above-bounden A. B., and on his promise of indemnity, hath discharged his said apprentice of and from his service [and hath repaid unto the said A. B. the sum of dollars, by him had and received with his said apprentice, the receipt of which said sum of dollars, he, the said A. B., doth hereby acknowledge]: NOW, THE CONDITION of this obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall at all times hereafter, save, defend, keep harmless, and indemnified the said Y. Z., his heirs, executors, and administrators, of and from all and every the covenants in the said indenture of apprenticeship contained, and which, on the part of the said Y. Z., his executors or administrators, are or ought to be done and performed, and all action and actions, suit and suits, both at law and in equity, costs, charges, damages, and expenses whatsoever, which shall or may happen to him or them, for or by reason thereof, or touching or concerning the said indenture of apprenticeship, or by reason or means of any sum or sums of money by him had and received with the said C. B., or from payment thereof or anywise relating to any of the said matters, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signature and seal.]

[Acknowledgment.]

461. Bond by One Empowered to Collect Debts for Executors, etc.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of , in the county of , and state of , am [*or, if with surety, say, we, A. B., of, etc., and C. D., of, etc., are*] held and firmly bound unto W. X. and Y. Z., of , in said state, executors of the last will of M. N., deceased [*or, administrators of the goods, chattels, and credits which were of M. N., deceased*], late of the city of , and state of , in the sum of dollars [*inserting the penal sum*], good and lawful money of the United States, to be paid to the said executors [*or, administrators*] as aforesaid, their survivor or survivors, or their or his successors or assigns, for which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators [*or, we do bind ourselves, our heirs, executors, and administrators, jointly and severally*], firmly by these presents.

Sealed with my seal [*or, our seals*]. Dated this day of , .

WHEREAS, the above-named W. X. and Y. Z., as executors of the last will and testament [*or, as administrators of the goods, chattels, and credits which were*] of M. N., late of , deceased, by their power of attorney, bearing even date herewith, have constituted and appointed the above-bounden A. B., of , their true and lawful attorney for them, and in their names, and for their sole use and benefit, to ask, demand, collect, and receive of and from all and every person and persons, debtors to the estate of the said M. N., all sum and sums of

moneys from them, or any of them, now [*or, to become*] due and owing to the estate of the said M. N., as in and by the said power of attorney appears: Now, THE CONDITION of the above obligation is such, that if the above-bounden A. B., his executors and administrators, do, and shall from time to time and at all times hereafter, upon request, deliver, or cause to be delivered, unto the said W. X. and Y. Z., their successors or assigns, a just and true account, in writing, of all moneys which he shall receive by virtue of said power of attorney, with the names of the persons from whom received, and for what; and also from time to time, pay and deliver over unto the said W. X. and Y. Z., their successors or assigns, or to such other person or persons as shall be thereto by them appointed, all such moneys as upon such account or otherwise shall appear to have been received by him, or to be remaining in his hands, without fraud or further delay, then this obligation is to be void; otherwise, to be in full force and virtue.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

462. Bond for the Return of Goods to be Sold, or Their Value.

[*The penal clause will be as in Form 436 to*, thence continuing thus:*]

WHEREAS, the above-named W. X. and Y. Z. have delivered to the above-bounden A. B. certain merchandise, consisting of [silks, velvets, and other goods], to the value of dollars, to be by him sold [by public sale forthwith, for ready money]: Now, THE CONDITION of this obligation is such, that if the said A. B., his executors or administrators, shall within next ensuing the date hereof, return unto the said W. X. and Y. Z., or either of them, their or either of their executors, administrators, or assigns, all such of the said merchandise as shall then remain unsold [casualties happening by fire, only, excepted], and pay, or cause to be paid, unto the said W. X. and Y. Z., or either of them, their or either of their executors, administrators, or assigns all such moneys as shall have been by him then received for the merchandise so sold [or the price of all such merchandise which shall then have been sold], then this obligation to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

463. Bond for the Fidelity of a Clerk.

[*The penal clause may be as in Form 436 to*, thence continuing thus:*]

WHEREAS, the above-named Y. Z. has [or W. X. and Y. Z. have] employed M. N. as a clerk or salesman [*or, clerk or porter, or otherwise*], in their business of : Now, THE CONDITION of this obligation is such, that if the said M. N. shall well and faithfully [*or, with honesty and in good faith*] discharge his duties as such , and shall also account for all moneys and property, and other things which may come into his possession or under his control therein, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

464. Bond for the Fidelity of the Treasurer of an Unincorporated Association.

*[The penal clause may be as in Form 440 to the *, thence continuing thus:]*

WHEREAS, the above-bounden A. B. has been chosen treasurer of the Company [*or*, Association, *or*, Society], for the period of one year; and whereas, the said A. B. may hereafter be re-elected to or continued in such office for a further period, by reason whereof he will receive or have control of divers sums of moneys, property, and other things of the said company [*or*, association, *or*, society], and others: NOW, THE CONDITION of this obligation is such, that if the said A. B., his executors, or administrators, shall at all times hereafter, honestly and in good faith serve as such treasurer during his continuance in said office within the term for which he is chosen [*or*, so long as he shall continue and be continued in said office], and hold and dispose of whatever he may receive as such treasurer, as the association or its board of directors may direct, and according to the provisions of the constitution, by-laws, and regulations of said company [*or*, association] now existing, or which may be by them adopted; and at the expiration of his said office, or sooner, if thereto required, upon due request to him or them to be made, shall make and give unto such auditor and auditors as shall be appointed by the said company, a just and true account of all sum or sums of moneys, property, and other things, as have come into his possession, or under his control or charge, as treasurer aforesaid; and shall pay and deliver over to said corporation, its successors or assigns, or his successor in office, or any other person duly authorized to receive the same, all such moneys, property, and other things which shall appear to be in his hands and due by him to the said company [*or*, association, *or*, society], then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

465. Bond for the Fidelity of the Cashier or Teller of a Bank.

*[The penal clause may be as in Form 440 to the *, thence continuing thus:]*

WHEREAS, the above-bounden A. B. has been chosen and appointed cashier [*or*, teller], of the Bank, by reason whereof he will receive, or have control or be chargeable with money, property, or other things of said bank, and others: NOW, THE CONDITION of this obligation is such, that if the said A. B., his executors or administrators, shall well and truly serve the said bank as such officer during his continuance in office, within the term for which he has been chosen [*or*, so long as he shall continue and be continued in said office], and well and truly perform and discharge all his duties as such officer, and shall at the expiration of his said office, or whenever sooner thereto required, upon request to him or them made, shall make or give unto the said bank or their agent, or attorney, a just and true account of all moneys, property, and other things, as shall have come into his possession, control, or charge, as such officer, and shall pay and deliver over to his successor in office, or any other person duly authorized to receive the same, all such balances or sums of money, property, and other things, which shall appear to be in his hands, or chargeable to him, and due or deliverable by him to the said bank, then this obligation to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

IV. BONDS OF INDEMNITY.

An obligation of indemnity against a demand includes, as incidental thereto, indemnity against damages and costs sustained in consequence of the demand, but an obligation of indemnity against costs, charges, and expenses does not extend to damages. An obligation to indemnify against the claims and demands of all persons does not extend to tortious acts.

An obligation to indemnify against "charge or liability" is broken by the existence of a liability, even without payment. But an obligation to indemnify against a "claim," or a "demand," or "damage," or "molestation," or "loss," or "expenses," or "costs," is not broken without actual loss or expense.

An obligation to indemnify one against expenses "which he may incur," is not broken by mere liability, but payment must be shown; but a promise to indemnify him against damages, costs, and charges, "to be imposed on or demandable from him," extends to a legal liability.

466. Bond, with Surety, to Indemnify the Sheriff on Levying an Execution.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the town of _____, in the county of _____, and state of _____, farmer, and C. D., of the same place, merchant, are held and firmly bound unto Y. Z., sheriff of the county of _____, in the sum of _____ dollars [inserting the penal sum], good and lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns, for which payment well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this _____ day of _____, .*

WHEREAS, the above-bounden A. B. did obtain judgment in the court of _____ against M. N. for certain damages and costs, amounting to _____ dollars, whereupon execution has been issued, directed and delivered to the said Y. Z., sheriff of _____ county, requiring him that of the goods and chattels of the said M. N., he should cause to be made the sum of \$ _____, for the damages and costs aforesaid. And, WHEREAS, certain goods and chattels that appear to belong to the said M. N. are claimed by O. P.: Now, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D. shall jointly and severally, well and truly save harmless, and indemnify the said Y. Z., and any and all persons aiding and assisting him in the premises, from all harm, trouble, damage, costs, suits, actions, judgments, and executions that shall or may at any time arise, come or be brought against him, them, or any of them, as well for the levying and making sale under and by virtue of such execution, of all or any goods and chattels which he or they shall or may judge to belong to the said M. N., as well as in entering any shop, store, building, or other premises, for the taking of any such goods and chattels, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

467. Bond, with Surety, to Indemnify Maker of Note or Acceptor of Bill for Accommodation, from Loss Thereby.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the town of _____, in the county of _____, and state of _____, farmer, and C. D., of, etc., are held and firmly bound unto Y. Z., of the town of _____, in the county of _____, and state of _____, merchant, in the sum of _____ dollars, good and

lawful money of the United States, to be paid to the said Y. Z., his executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of , . *

WHEREAS, the said Y. Z. has, without consideration to him moving therefor, and solely for the accommodation of the above-bounden A. B., made and advanced to said A. B. his promissory note [*or*, accepted a bill of exchange drawn by upon him] for dollars, bearing date the day of , , and payable to [with interest], days after the date thereof: Now THE CONDITION of this obligation is such, that if the said above-bounden A. B. and C. D., their executors or administrators, or any of them, shall well and truly pay the said sum of dollars, for the payment of which the said note [*or*, bill] is so given, and the interest thereof, on the day of payment therein mentioned, and in full discharge thereof, and indemnify and save harmless the said Y. Z., his executors and administrators, from and against any and all suits, actions, damages, costs, charges, and expenses, by reason of said note [*or*, bill], then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

468. Bond to Indemnify Partners Having Indorsed for Accommodation, Against Liability Thereby.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the town of , in the county of , and state of , and C. D., of the same place, merchants, are held and firmly bound unto W. X. and Y. Z., of the town of , in the county of , and state of , merchants, doing business under the name of Y. Z. & Co., in the sum of dollars, good and lawful money of the United States, to be paid to the said W. X. and Y. Z., or their survivors, executors, administrators, or assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of , . *

WHEREAS, the said Y. Z. & Co. have, without consideration to them moving therefor, and solely for the accommodation of the above-bounden A. B., indorsed a promissory note made by [*or*, a bill of exchange drawn by upon], for dollars, bearing date the day of , , and payable to [with interest], days after the date thereof.

NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, the said sum of dollars, for the payment of which the said note [*or*, bill] is so given, and the interest thereof, according to the tenor thereof, and in full discharge thereof, and indemnify and save harmless the said W. X. and Y. Z., their executors and administrators, and each of them, from and against any and all liability by reason of said note [*or*, bill], as well as against any and all suits, actions, damages, costs, charges, and expenses, by reason thereof, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

469. Bond by a Person Carrying on Business in the Name of Another, to Indemnify the Latter from Loss or Damage.

*[The penal clause may be as in the preceding forms, 467 or 468 to the *, thence continuing thus:]*

WHEREAS, the above-named Y. Z. has, at the request of the above-bounden A. B., consented that during the term of _____ years from the date hereof, the said A. B. may use the name of the said Y. Z. in carrying on the business of _____, at _____, which he does and is to do for his own account and profit, and not for the account or profit of the said Y. Z., but only to preserve the said business to himself, the said Y. Z., having left the same; provided, however, that the said Y. Z. may be indemnified against all damage by reason of so carrying on the said business, or the using of his name therein; NOW, THE CONDITION of this obligation is such, that if the said A. B., his heirs, executors, and administrators, or any of them, shall well and truly indemnify and save harmless the said Y. Z., his executors and administrators, from all manner of suits, actions, damages, charges, and expenses, which he or they may sustain or be put to by reason of the said A. B.'s so using the name of the said Y. Z. as aforesaid, or by reason of anything relating thereto, then the above obligation is to be void; otherwise, to remain in full force and virtue.

In presence of _____

[Signatures and seals.]

[Acknowledgment.]

470. Bond to Indemnify Tenant on Paying Rent, when Title is in Dispute.

*[The penal clause may be as in Forms 467 or 468 to the *, continuing thus:]*

WHEREAS, the above-named A. B. claims from the said Y. Z. rent of certain premises in _____ [*briefly designating them*] — to wit, _____ dollars, due on the _____ day of _____, [and quarterly thereafter]; and one M. N. also claims some title to said premises, and to be of right entitled to said rents, or some part thereof: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, and administrators, or any of them, shall well and truly, at all times, indemnify and save harmless the said Y. Z., his heirs, executors, and administrators, from and against any and all actions, suits, damages, costs, and expenses, for or by reason thereof, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of _____

[Signatures and seals.]

[Acknowledgment.]

471. The Same; Another Form; Requiring Recovery Against the Tenant.

*[The penal clause may be as in Forms 467 or 468 to the *, thence continuing thus:]*

WHEREAS, an action is now pending between the above-bounden A. B. and others touching the right, title, and interest to and in the [*designating premises*], now occupied by _____, situate, etc.; and WHEREAS, the said Y. Z. has agreed to pay the rent of the said [house] to the said A. B.— to wit, the sum of _____, yearly, as the same shall grow due: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said Y. Z., his executors, administrators, or assigns, all such rent, sum and sums of money, charges and damages whatsoever, as shall by due proceedings in law be adjudged or decreed against him, the said

Y. Z., his heirs, executors, administrators, or assigns, and all other costs and damages whatsoever, which he or they shall incur by reason of any action, suit, or forfeiture whatsoever, which shall or may happen to the said Y. Z., his heirs, executors, administrators, or assigns, by reason of paying the said rent, or any part thereof, to the said A. B., his heirs, executors, administrators, or assigns, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

472. Bond to Indemnify Against Claim of Dower.

[The penal clause may be as in Form 467 to the *, thence continuing thus:]

WHEREAS, the above-bounden A. B., by indenture, under his hand and seal, bearing date the day of , , has granted, bargained and sold unto the above-named Y. Z. [here briefly designate the premises], with the appurtenances, to hold the same to him, his heirs and assigns, forever, as by the said indenture will more fully appear: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, and administrators, or any of them, shall well and truly indemnify and save harmless the said Y. Z., his heirs, executors, administrators, and assigns, from and against any and all dower or thirds which M. N., widow of V. N., shall or may claim in said premises, or any part thereof, and from all actions and suits, whether groundless or otherwise, and all damages, costs, and expenses, by reason thereof, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

473. Bond to Indemnify on Paying a Lost Note or Bill.

[If with surety, the penal clause will be as in Form 467; if without, as in Form 437 to the *, and thence continue thus:]

WHEREAS, a promissory note for dollars made by [or, a bill of exchange drawn by , upon], bearing date at , the day of , and payable months after the date, to the order of , at [and indorsed by], and which is now the property of the above-bounden A. B., has been lost [or, destroyed], and cannot now be produced by him; and WHEREAS, at his request, and upon his promise to indemnify and save harmless the said Y. Z. in the premises, and to deliver up the said note, when found, to the said Y. Z., to be canceled, the said Y. Z. has this day paid unto the said A. B. the sum of dollars, the receipt whereof the said A. B. doth hereby acknowledge, in full satisfaction and discharge of the said note: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, and administrators, or any of them, shall well and truly indemnify and save harmless the said Y. Z., his executors and administrators, from and against the said note [or, bill], any and all damages, costs, charges, and expenses [and all actions or suits, whether groundless or otherwise], by reason of said note [or, bill], and also deliver, or cause to be delivered, up the same, when and so soon as the same shall be found, to be canceled, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

474. Bond to Indemnify on Paying a Lost Bond.

[If with surety, the penal clause will be as in Form 467; if without, as in Form 437 to the *, and thence continue thus:]

WHEREAS, the above-named Y. Z., by his bond or obligation under seal, bearing date on or about the day of , , became bound to the above-bounden A. B., in the penal sum of dollars, conditioned for the payment of the sum of dollars, unto the said A. B., his executors, administrators, or assigns, on the day of , 18 [stating it according to the condition of the lost bond], as by the said bond, when produced, will more fully appear; and whereas, the said bond is alleged to be lost, so that the same cannot be found; and WHEREAS, the said , at the request of the said C. D., and on his promise of indemnity, has made him full satisfaction of and for the said bond: NOW, THE CONDITION of this obligation is such, that if the above-bounden A. B., his heirs, executors, or administrators, or any of them, shall, in case the said bond or obligation be found, or come to the hands or power of the said A. B., his heirs, executors, or administrators, or any of them, or to the hands, custody, or power, of any other person, deliver, or cause the same to be delivered, unto the said Y. Z., his executors or administrators, in order to be canceled, and also shall and at all times indemnify and save harmless the said Y. Z., his heirs, executors, and administrators, from and against any and all suits, actions, damages, costs, charges, and expenses, by reason of said bond, or any of the money so paid, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

475. Bond to Indemnify a Surety in a Bond for Payment of Money.

[If with surety, the penal clause will be as in Form 467; if without, as in Form 437 to the *, and thence continue thus:]

WHEREAS, the above-named Y. Z., at the special instance and request of the above-bounden A. B., and for his debt, together with and as well as he, the said A. B., is held and firmly bound unto a certain M. N., of , in and by an obligation bearing even date herewith, in the penalty of dollars, lawful money, as aforesaid, conditioned for the true payment of [here recite the condition of the previous bond]: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said M. N., his executors, administrators, or assigns, the said sum of dollars, with interest thereon at the rate of per cent. per annum, as aforesaid, on the day of [or, if the bond is made payable at several times, say, at the several times limited in the said recited condition], according to the true intent and meaning of said condition, and in full discharge and satisfaction of said obligation, and shall indemnify and save harmless the said Y. Z., his heirs, executors, and administrators, from and against any and all suits, actions, damages, costs, charges, and expenses, by reason of said recited obligation, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of

[Signatures and seals.]

[Acknowledgment.]

476. The Same; To a Surety in a Bond for Performance of Covenants.

[If with surety, the penal clause will be as in Form 467; if without, as in Form 437 to the *, and thence continue thus:]

WHEREAS, the above-named Y. Z., at the special instance and request of the above-bounden A. B., and for his debt, together with and as well as he, the said A. B., is held and firmly bound unto a certain M. N., of _____, in and by an obligation bearing even date herewith, in the penalty of _____ dollars, lawful money, as aforesaid, conditioned for [*here recite the condition of the previous bond*]: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and his heirs, executors, and administrators, or any of them, shall well and truly perform the condition of the said recited bond, according to the true intent and meaning thereof, and shall indemnify and save harmless the said Y. Z., his heirs, executors, and administrators, from and against any and all actions, suits, damages, costs, charges, and expenses, by reason of said recited obligation, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of _____

[Signatures and seals.]

[Acknowledgment.]

477. Bond to Indemnify a Receptor to the Sheriff.

[Penal clause as in preceding forms.]

WHEREAS, M. N., sheriff of the county of _____, has levied on [*here designate the goods*], property of the above-bounden A. B., by virtue of an attachment [*or, execution*] against said A. B., issued out of the _____ court, and has delivered the same to the said A. B., upon the said Y. Z. giving, at the request of said A. B., a receipt or obligation dated the _____ day of _____, and conditioned [*reciting the condition*]: NOW, THE CONDITION of the above obligation is such, that if the above-bounden A. B. and C. D., their heirs, executors, and administrators, or any of them, shall well and truly indemnify and save harmless the said Y. Z., his heirs, executors, and administrators, from the giving of said receipt or obligation to said sheriff, then this obligation is to be void; otherwise, to remain in full force and virtue.

In presence of _____

[Signatures and seals.]

[Acknowledgment.]

V. OFFICIAL BONDS.

The conditions of official bonds are usually prescribed by the law which exacts them, and the form should follow the statute. For that reason but one full form is given here. The penal clause of an official bond may be drawn, in all cases, similarly to that given below, unless the statute otherwise directs.

478. General Form.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the town of _____, in the county of _____, and state of _____, and C. D., of the same place, merchant, and E. F., of the city of _____, and county of _____, farmer, are held and firmly bound unto the people of the state of _____ [*or, the commonwealth of _____, or, designating officers prescribed by law*], in the sum of _____ dollars [*inserting the penal sum*], good and lawful money of the United States, to be paid to the said people of the state of _____ [*or, commonwealth of _____, or, said, designating officers, and their successors*], for which pay-

ment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of .

WHEREAS, the above-bounden A. B. has been appointed [*or*, elected] to the office of [*giving the title of the office at full length*]. NOW, THE CONDITION of the above obligation is such, that if the said A. B. shall [*following the language of the statute which prescribes the form of the condition*], then the above obligation is to be void; otherwise, to remain in full force and virtue.

Signed and sealed in presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

479. Bond of Sheriff.

KNOW ALL MEN BY THESE PRESENTS, that we, Y. Z., of the town of , in the county of , and state of , lately elected [*or*, appointed] sheriff of the said county, and A. B., of , in the county of , merchant, and C. D., of, etc., are held and firmly bound unto the people of the state of , in the penal sum of ten thousand dollars, good and lawful money of the United States, to be paid to the said people, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of .

WHEREAS, the above-bounden Y. Z. hath been elected to the office of sheriff of , at the general election [*or*, at a special election, *or*, has been appointed, etc.], held therein, on the day of ;

NOW, THEREFORE, the condition of the above obligation is such, that if the said A. B. shall well and faithfully, in all things, perform the duties and execute the office of sheriff of the said county of during his continuance in the said office, by virtue of the said election, without fraud, deceit, or oppression, then the above obligation to be void; otherwise, to remain in full force and virtue.

In the presence of

[*Signatures and seals.*]

[*Acknowledgment.*]

480. Affidavit of the Sufficiency of Sureties, to be Indorsed on the Foregoing Bonds.

COUNTY OF , ss.

C. D. and E. F. [*or*, C. D., one of] the sureties named in the within bond, being duly [*severally*] sworn, says [*each for himself*], that he is a freeholder within the state of New York, and worth the sum of thousand dollars, over and above all debts whatsoever owing by him.

Subscribed in my presence, and sworn before [*Signatures of sureties.*]

me, this day of ,

M. N., Clerk of the county of

481. Clerk's Certificate of Approval of Sureties. •

I, M. N., clerk of the county of , do hereby certify, that I have examined the competency and do approve of the sureties, C. D. and E. F., in the within bond.

[*Date.*]

[*Signature.*]

CHAPTER XVI.

CERTIFICATES.

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482. Certificate to Copy of Paper on File.

STATE OF _____, COUNTY OF _____, }
 CLERK'S OFFICE. } ss.

I [*give name and official designation of officer*] DO HEREBY CERTIFY, that I have compared the foregoing copy of a [*naming the instrument*], [and of the indorsements thereupon], with the originals now remaining on file in this office, and that the same are correct transcripts therefrom, and of the whole of said originals.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this _____ day of _____, in the year one thousand [OFFICIAL SEAL.] nine hundred and _____

[*Signature and title of officer.*]

483. Certificate to Copy of Record.

STATE OF _____, }
 Office of Secretary of State, } ss.

I [*give name and official designation of officer*] DO HEREBY CERTIFY that I have compared the preceding with a certain indenture recorded in this office, in Book of Deeds No. _____, page _____, etc., and do certify that the same is a correct transcript therefrom and of the whole of said indenture. [*Here note any alterations in the manuscript, if any there be—e. g., thus: one line interlined at the top of page 2, before making this certificate.*]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal [OFFICIAL SEAL.] of this office, at the city of _____, the _____ day of _____, in the year one thousand nine hundred and _____

[*Signature and title of officer.*]

484. Certificate of Official Character.

STATE OF _____, }
 County of _____, } ss.

I, M. N., clerk of the said county, do hereby certify that O. P., the person subscribing the foregoing [*here designate the instrument*], and before whom the same was taken, was, on the _____ day of _____, therein mentioned, a judge of the court of _____, a court of record of the said county of _____ [*or other officer, as the case may be*], and that I am well acquainted with the handwriting of the said O. P., and verily believe that his name subscribed to the said certificate is his proper and genuine signature.

[*Attestation, signature, etc., as in preceding form.*]

For a form of certificate of official character, including the due execution of the instrument according to the laws of the place, see chapter on ACKNOWLEDGMENT AND PROOF OF DEEDS, *Form 121*.

485. Certificate as to Authentication of Papers Under United States Laws.

STATE OF _____, }
County of _____, } ss.

I, _____, clerk of the _____ court in and for the said county, the same being a court of record, do hereby certify, that _____, whose name is subscribed to the jurat of the annexed affidavit, was, at the time of the taking of said affidavit, a notary public in and for said county, and then was duly authorized by the laws of the said state to take the same, and to administer oaths within said state, and was also duly authorized by the laws of said state to take the proof and acknowledgment of deeds to be recorded in said state; and I do further certify that I am well acquainted with the handwriting of said notary public, and that I verily believe his signature subscribed to said jurat is genuine.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on this _____ day of _____, _____.

NOTE.—The foregoing certificate should be executed under the name and official seal of the clerk, register, recorder, or a prothonotary of the county, or the clerk of any court thereof having a seal, or of the secretary of state. It will not be sufficient if the signature purports to be made by a deputy.¹

CHAPTER XVII.

CHARTER PARTIES.

A CHARTER PARTY is a contract of affreightment in writing, by which the owner of a ship or other vessel lets the whole, or a part of her, to a merchant or other person, for the conveyance of goods, for a particular voyage, or period of time, in consideration of the payment of freight. The instrument ought to contain: 1. The name and tonnage of the vessel. 2. The name of the captain. 3. The names of the charterer and the freighter. 4. The place and time agreed upon for the loading and discharge. 5. The price of the freight. 6. The demurrage or indemnity in case of delay. 7. Such other conditions as the parties may agree upon.

Important differences in reference to the rights and liabilities of the parties, not only as between themselves, but as respects consignors and consignees, and persons furnishing supplies and repairs, depend upon the question whether the charter party reserves to the owner the right of possession and of control, or divests him of it, and gives it to the freighter, so as to make the latter the owner *pro hac vice*. In the absence of express words on this point, it is to be determined as a question of construction upon the whole instrument, whether the owner intended to part with possession. But the contract may limit or relieve the owner's liability imposed by the passenger laws of the congress. *

Where the owner of a vessel charters her for a voyage, equips her himself, hiring and paying the crew, and furnishing them with provisions, and reserving room for them and the provisions, the hirer is not owner of the vessel *pro hac vice*, but the original ownership continues. Where, by the terms of the charter, the shipowner appoints the master and mariners, and retains the management and control of the vessel, the charter is rather to be considered as a covenant to carry goods. Where, however, the whole management is given over to the freighter, it is more properly a hiring of the vessel for the voyage; and in such case the hirer is deemed owner *pro hac vice*. The owner of the vessel is presumed to warrant the vessel's seaworthiness.

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¹ Steele v. U. S. Pipe Line Co., 90 Hun, 25.

486. Charter Party Reserving Possession to the Owner.

THIS CHARTER PARTY, made and concluded upon the day of , in the year one thousand nine hundred and , between A. B., master and part owner [or, agent for the owners, or otherwise, as the fact may be] of the ship [or other vessel, naming it], of , of which is master, of the burden of tons or thereabouts,¹ register measurement, now lying in the harbor of , of the first part, and Y. Z., of , in the state of , merchant, of the second part, WITNESSETH, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, does covenant and agree on the freighting and chartering of the said vessel unto the said party of the second part, for a voyage from [here describe the voyage — e. g., thus:] the port of M. to N., and return to M., and on the terms following — that is to say:

1. The said party of the first part engages that the said vessel, in and during the said voyage, shall be kept tight, staunch, well-fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.

2. The said party of the first part further engages that the whole of the said vessel (with the exception of the cabin, the deck, and the necessary room for the accommodation of the crew, and the stowage of the sails, cables, and provisions)² shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid; and that no goods or merchandise whatever shall be laden on board, otherwise than from the said party of the second part, or his agent, without his consent, on pain of forfeiture of the amount of freight agreed upon for the same.³

3. The said party of the first part further engages to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or his agents, may think proper to ship [under and on deck].

4. And the party of the first part agrees to proceed with all dispatch from M. direct to N., and return to M., and there discharge the cargo aforesaid. [Here may be inserted any special stipulations which may be agreed as to the use of the vessel — e. g., the following:] The party of the second part is to have the use of the cabin for passengers, and to carry, if desired, steerage passengers on the between-deck, and to provide for the same himself.

[Or thus:] It is further agreed, that the vessel takes one passenger, free of expense, he furnishing all his extra stores, etc.

¹ Describing the vessel in the charter party as of the burden of a specified number of tons, or thereabouts, is a description and not a warranty; and if it is not fraudulently inserted, and does not entrap the charterer into the bargain, it will not vitiate the contract, although the vessel be of considerably less burden, and although shipments could not be so readily obtained, or insurance upon cargo so readily effected in a vessel of such size, as in one of the size stated in the charter party. Ashburner v. Balchen, 7 N. Y. 262.

² Such a provision as this contemplates no merely accommodations absolutely necessary and literally indispensable, but that the

officers and crew are to be accommodated in the mode adapted or fitted to their station, the character of the vessel and the nature of the voyage being taken into consideration. Almgren v. Dutihl, 5 N. Y., 28.

³ Where the charter party contains such provisions as the two foregoing, which are in the usual form, and the owners appoint the master, they are deemed to continue in possession, and may have a lien for their charter money upon all merchandise. Holmes v. Pavenstedt, 5 Sandf. 97 and cases cited; McTaggart v. Henry, 3 E. D. Smith, 390; Williams v. Johnson, 11 Barb. 501.

It is also further agreed, that the vessel takes out, on deck, eight to ten horses, the party of the second part fitting up stalls, and furnishing everything necessary for their accommodation.]

And the said party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, covenants and agrees, with the said party of the first part, to charter and hire the said vessel as aforesaid, on the terms following — that is to say:

1. The said party of the second part engages to provide and furnish to the said vessel a full cargo of lawful merchandise, or at least sufficient for ballast.

2. The said party of the second part further engages to pay to the said party of the first part, or his agent, for the charter or freight of the said vessel during the voyage aforesaid, in manner following — that is to say: [here set forth the terms agreed on — e. g., thus:] dollars, payable upon delivery of her cargo at M. The party of the first part is to pay all the expenses of the vessel, including port charges and stevedore bills.

[Or thus: dollars per calendar month, and so in proportion for a less time, so long as the said vessel shall be continued in the aforesaid service, such payment to be made in the manner following — that is to say: Charter payable upon termination of the voyage, except so much as the captain may require for his disbursements in foreign ports, which is to be advanced on account of this charter, free of commissions. And the said party of the second part further engages to pay all the foreign port charges on the vessel during the aforesaid voyage, including lighterage, pilotage, and consuls' fees.]

It is further agreed between the parties to this instrument, that the said party of the second part shall be allowed for the loading and discharging of the vessel at the respective ports aforesaid, lay days as follows — that is to say: Dispatch loading and discharging at the port of , and [running¹] days at the port of ; and in case the vessel is detained, the said party of the second part agrees to pay to the said party of the first part, demurrage at the rate of dollars per day, day by day, for every day so detained, provided such detention shall happen by default of the said party of the second part, or his agent.

It is also further understood and agreed, that the cargo or cargoes shall be received and delivered alongside of the vessel, within reach of her tackles, or according to the customs and usages at the ports of loading and discharging.

It is also further understood and agreed, that this charter shall commence² when the vessel is ready to receive cargo at her place of loading, and notice thereof is given to the party of the second part, or to his agent [and terminate on the return of the vessel and the discharge of her cargo at the last port of delivery].

It is also further understood and agreed, that the risks and responsibilities assumed by the party of the first part are solely and only those of his neglects or omissions, and of that of his servants. And that all and every other of the risks, hazards, and contingencies, of the elements and navigation, of all

¹ A provision for "running days" is, in effect, a positive stipulation by the freighter that he will load and unload within the time mentioned. An inevitable accident does not excuse him. *Field v. Chase, Hill & D. Supp. 50; S. C., N. Y. Leg. Obs. 8.*

² If the charter party fixes a day for the vessel to be in readiness, it may be regarded as a condition precedent, if upon the whole instrument such appears to be the clear intent of the parties. *Weisser v. Maitland, 3 Sandf. 318.*

and every class, character, and description, are assumed and to be borne by the party of the second part.

[Here any special stipulations may be inserted, such as the following:] It is understood that the vessel is to carry out to N., tons measurement of assorted cargo, or more if she can, provided that she is not in any case to draw over feet of water, and to bring back hogshheads of sugar, or its equivalent, or more if she can, provided that she is not in any case to draw more than feet of water.

To the true performance of all and every of the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators, and assigns (especially the said party of the first part, the said vessel, her freight, tackle, and appurtenances; and the said party of the second part, the merchandise to be laden on board), each to the other in the penal sum of dollars.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals, the day and year above written.

Signed, sealed, and delivered, in the presence of [*Signatures and seals.*]

[*Acknowledgment.*]

487. Charter Party Giving Possession to the Hirer.

THESE ARTICLES OF AGREEMENT, made and entered into this day of , A. D. , by and between A. B., of , of the first part, and Y. Z., of the city of , of the second part, WITNESSETH: The said party of the first part has this day chartered and hired unto the said party of the second part the steamboat , of [*designating her port*], and of the burden of tons, or thereabouts, with all the appurtenances, cables, anchors, chains, etc., which belong to said steamboat, for the term of months, from the day of , to be delivered at the port of . But in case the said A. B. shall deliver the said boat at any time before said day, the said term shall take date from the time of delivery.

For the use of said steamboat, said Y. Z. agrees and binds himself to pay to the said A. B. dollars, the payments to be made as follows: dollars on the delivery of said boat; dollars on the day of , and dollars at the expiration of said months. And it is further understood, that the said Y. Z. shall be at all the expense of manning and furnishing said boat for the time above stated, and shall return the same to the said A. B. at the port of , in as good condition as it now is, with the exception of the ordinary use and wear;¹ and if the said Y. Z. shall at any time refuse to fulfil on his part, the said A. B. shall have the right to take possession of the said boat wherever the same be found.

IN WITNESS [*etc., as in preceding form*].

¹ Under such a provision as this, the hirer of the vessel is not liable as an insurer against the perils of the sea or risks of navigation; and is not answerable for the loss of the boat in a violent storm, during the continuance of the charter, without his fault. The clause expresses simply what the law would have implied from the nature of the contract, and, therefore, does not vary the common-law liability of the charterer. *Ames v. Belden*, 17 Barb. 513.

CHAPTER XVIII.

CHATTEL MORTGAGES.

A CHATTEL MORTGAGE is a transfer of the title to chattels, with or without possession, as security for a debt or liability, and upon condition that the transfer shall be void if the debt or liability be paid or discharged. If the debt is not paid at the time appointed, the mortgagee becomes absolute owner, and has a right to take the chattels into his own possession if they are not in his possession already, and his creditors have likewise a right to levy on the chattels as his property. But the mortgagor has a right to redeem them from the mortgagee, and this right the mortgagee can only cut off by a sale, applying the proceeds to payment of the debt. But he is not bound to sell, unless the mortgage requires him to do so; he may keep the goods, as owner, subject only to the mortgagee's right to redeem. And if they are of sufficient value to pay the debt, his so doing may be regarded as payment.

Description of Debt and of Chattels.—The true amount of the indebtedness or liability to be secured should be stated in a chattel mortgage; and the goods should be described with sufficient precision to identify them. The goods may be described in a schedule annexed and referred to in the mortgage, and such a schedule is regarded as a part of the mortgage, and both papers are construed together. The goods may be designated in general terms in the mortgage, and an intention to make and annex a schedule subsequently may be expressed. If the schedule is referred to as being annexed, it is essential that it be so annexed, or the instrument is not complete or effectual. But if the goods are designated, and an intention to annex a schedule is expressed, the omission to fulfil the intention is not necessarily fatal, although it may be a suspicious circumstance indicating fraud as against other creditors.

A chattel mortgage cannot, as a general rule, be made effectually to cover property not in existence or which the mortgagor may afterwards acquire, so as to secure it against his other creditors; but in many of the states chattel mortgages upon crops to be grown, and to grow which money or seed is advanced, are very common. It may be made to secure future advances as well as existing indebtedness, if the intent is expressed in the instrument; and it will be effectual to the extent of such advances as are actually made in good faith, before any other creditor or purchaser acquires a lien or title to the property.

Possession.—It has long been a disputed question whether, to constitute a valid mortgage as against other creditors, the mortgagee must, unless the mortgage is filed, take possession of the goods at the time of receiving the mortgage. The rule now generally accepted is, that if the goods, at the time of the mortgage, are in the possession or under the control of the mortgagor, there must be an immediate and continued change of possession; otherwise the transaction will be presumed to be fraudulent as against his creditors or subsequent purchasers in good faith; and the mortgagee or those claiming under him must, in order to sustain the mortgage, prove affirmatively that it was made in good faith and without any intent to defraud.

If the mortgage contains no clause as to the right of possession, the mortgagee is entitled, by virtue of the title it vests in him, to take immediate possession without any default on the part of the mortgagor. Therefore, where the mortgagor is to retain possession until default, as may safely be allowed

if good faith can be proved, it is usual to insert a clause securing to him the right to do so. This should be in express terms. A clause authorizing the mortgagee to take possession, in certain circumstances, is not regarded as impliedly excluding his right to do so in other circumstances. Most of these points are now covered by direct legislation in most of the states.

But the mortgagor cannot reserve power to sell the property, unless it be stipulated that he is to apply the proceeds in payment of the mortgage; for to reserve the right to sell for his own benefit would be to attempt to create a trust for his own benefit, contrary to the statute of fraudulent conveyances. So, where the mortgage is a stock of goods in a store, if any such reservation is inserted, the mortgagor should be required by it to sell for cash, and apply the proceeds in payment of the debt. For the same reason, if the mortgage of a stock of goods in a store is expressed to include all others which may be brought in to replace goods sold, this implied power to sell should be accompanied by the same restrictions.

Danger Clause.—Where a clause giving the mortgagee the right to retain possession until default is inserted, it is usual to add a qualification, that if the goods should be removed or disposed of, or a removal or disposal attempted, or if for other reasons the mortgagee's security should become inadequate, he may thereupon take possession. This is termed the danger clause.

Demand.—If a chattel mortgage specifies no time of payment, and does not expressly require a demand, demand is not necessary. If it is payable on demand, a demand, though necessary to put the mortgagor in default, is not necessary to enable the mortgagee to maintain his title as against third persons unlawfully interfering with the property.

Sale.—If a chattel mortgage contains no provision requiring a sale, the mortgagee may sell or not as he chooses; and a sale may be without judicial proceedings, reasonable notice being given. If the goods can be sold in separate parcels, no more should be sold than is necessary to pay the debt and expenses.

Personal Liability.—Giving a chattel mortgage does not necessarily render the mortgagor personally liable for the sum secured; but a promise to pay the sum, or a recital that the mortgage is given to secure an indebtedness, does render the mortgagor personally liable, and, in such case, he may be sued on the mortgage in the first instance without resorting to the property.

Filing.—To prevent imposition upon subsequent purchasers and mortgagees, it is generally required that unless there is an actual and continued change of possession, the chattel mortgage, or a copy, must be filed or recorded in the town or city where the mortgagor resides, or where the property is located. This is not essential to the validity of a mortgage as against the mortgagor, but is absolutely essential as against other creditors, and subsequent purchasers and mortgages in good faith. All the states and territories, as well as some of the outlying dependencies, now have elaborate provisions governing chattel mortgages, which are given at length below. These should be carefully examined in each case. The usual forms of chattel mortgages, conditional bills of sale, crop mortgages and other similar papers in use in the several states are inserted.

Many of the corporate mortgages executed by railroads, etc., cover chattels and chattel interests, and are much more elaborate in their provisions than the earlier forms of chattel mortgages. See chapter on MORTGAGES, under *Equipment Mortgage, Collateral Trust Mortgage, etc.*

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I. GENERAL FORMS.

488. Short Form; Without Warranty, or Stipulations as to Right of Possession or Sale or Personal Liability.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, hereby sell and assign to Y. Z., of _____, all the tools and materials now in my shop at _____. This grant is intended as a security for the payment of _____ dollars, with interest, on or before the expiration of _____ from the date hereof; which payment, if duly made, will render this conveyance void.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of _____, .

In presence of _____ [Signature and seal.]
 [Acknowledgment.]

489. The Same; but With Personal Liability and Stipulation for Sale.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, acknowledge myself to be indebted to Y. Z., of said _____, in the sum of _____ dollars, with interest from this date [or, from the _____ day of _____, _____], and for the security of said sum I do hereby mortgage and sell and assign to the said Y. Z. all my property of every description, situate, lying and being in the house, corner of _____ street and _____ avenue, in the city of _____; and I do hereby authorize and empower the said Y. Z. to take possession of said property and effects, he to sell the same, and appropriate the proceeds to the payment of said debt and interest.

IN WITNESS [etc., as in preceding form.]

490. Chattel Mortgage to Secure a Present Indebtedness Payable on Demand, or at a Specified Day, with Reservation of Right of Possession, Except in Case of Danger, and Stipulation for Sale.

WHEREAS, I, A. B., of the town of _____, in the county of _____, and state of _____, am justly indebted unto Y. Z., of _____, in the said county, in the sum of _____ dollars, on account, to be paid on demand [or, on the _____ day of _____, _____], with interest from this date.

1 Other forms of the granting part of the forms of Bills of Sale, adding the a chattel mortgage may be adopted from clause of defeasance above.

NOW, THEREFORE, in consideration of such indebtedness, and in order to secure the payment of the same, as aforesaid, I do hereby sell, assign, transfer, and set over unto the said Y. Z., his executors, administrators, and assigns [*here describe the property, or refer to schedule, as in Forms 491 and 492*].

PROVIDED, HOWEVER, that if the said debt and interest be paid, as above specified, this sale and transfer shall be void; and this grant is also subject to the following conditions.

The property hereby sold and transferred is to remain in my possession until default be made in the payment of the debt and interest aforesaid, or some part thereof; * but in case of a sale or disposal, or attempt to sell or dispose of the same, or a removal of or attempt to remove the same from , or an unreasonable depreciation in value [*or, if from any other cause the security shall become inadequate*], the said Y. Z. may take the said property, or any part thereof, into his own possession. *

Upon taking said property, or any part thereof, into his possession, either in case of default, or as above provided, the said Y. Z. shall sell the same at public or private sale; and after satisfying the aforesaid debt and the interest thereon, and all necessary and reasonable costs, charges and expenses incurred by him, out of the proceeds of such sale, he shall return the surplus, if any, to me or my personal representatives.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , .

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

491. Chattel Mortgage, with Warranty of Title, Covenant to Pay the Debt, and Reservation of Right of Possession until the Mortgagee Demands it.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of , in the county of , and state of , farmer, party of the first part, for securing the payment of the sum of money hereinafter mentioned, and in consideration of the sum of one dollar, to me paid, at or before the ensembling and delivery of these presents, by Y. Z., of , aforesaid, merchant, party of the second part, the receipt whereof I do hereby acknowledge, have bargained, sold, granted, and conveyed, and by these presents do bargain, sell, grant, and convey unto the said party of the second part, his executors, administrators and assigns, all the ashes now being in the ashery in the possession of the said A. B., at ; [*or thus, all the stock of books, magazines, periodicals and stationery in the store of the said A. B., at ; or thus, all the household goods and furniture, and other articles mentioned in a schedule annexed hereto, and contained in the house of the said A. B., at ; or thus, all and singular the goods and stock of goods and merchandise, consisting of whips, lashes, and materials therefor, now in the store of the party of the first part, at No. , street, in the city of , and in the factory of the said party of the first part at , in the state of*] [but excepting and reserving therefrom all goods sold, or agreed to be sold, and packed to be delivered to purchasers], and all the furniture and movable fixtures in said store belonging to the party of the first part [a schedule of said goods and chattels to be made by the party of the first part, and annexed hereto with all convenient speed];

TO HAVE AND TO HOLD, all and singular the goods and chattels above bargained and sold or intended so to be, unto the said party of the second part, his executors, administrators, and assigns, forever. [*If the mortgage is a second mortgage, being subject to a prior one, insert here: subject, however, to a prior mortgage to M. N., dated the day of , 18 , to secure .*]

AND I DO, for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the said described goods hereby sold, unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whatsoever [subject as aforesaid].

* UPON CONDITION, that if the said party of the first part shall and do well and truly pay, or cause to be paid † unto the said party of the second part, his executors, administrators, or assigns, the sum of dollars and interest thereon, on the day of next, † [*or otherwise, as the case may be; see Forms 493 to 500*], then this conveyance shall be void; otherwise, to remain in full force.

AND the said party of the first part, for himself, his executors, administrators, and assigns, does covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in payment of the said sum above mentioned, or any part thereof, or of the interest thereon, on any day when the same ought to be paid [*may insert, if desired, then the whole sum shall at the election of the party of the second part become immediately due and payable; and*] * then it shall be lawful for, and the said party of the first part does hereby authorize and empower the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter and come into and upon the dwelling-house and premises of the said party of the first part, and such other place or places as the said goods and chattels are or may be held or placed in, and take and carry away the said goods and chattels, and to sell and dispose of the same, or so much as shall be necessary, for the best price they can obtain, and out of the money arising therefrom, to retain and pay the said sum above mentioned, with the interest and all expenses thereon, rendering the overplus, if any, unto the said party of the first part, his executors, administrators, and assigns. And until default be made in the payment of the aforesaid sum of money [*or some part thereof or interest thereon*], the said party of the first part is to remain and continue in quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same [*here may insert danger clause from Form 490, viz., the words between the * *, or may proceed thus:*] unless the said party of the second part, his executors, administrators, or assigns, shall sooner choose to demand the same; and until such demand be made, the possession of the said party of the first part shall be deemed the possession of an agent or servant, for the sole benefit and advantage of his principal, the said party of the second part.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day of , .

In presence of

[*Signature and seal.*]

[*Acknowledgment.*]

NOTE.—For another form for sale of securities, etc., see chapter on PROMISSORY NOTES.

492. Schedule Annexed to the Foregoing.

SCHEDULE of all the furniture and household goods mentioned in, and conveyed by, the annexed chattel mortgage.

One rosewood sofa.
Six do chairs.
One do arm-chair.

[Thus enumerating all the goods.]

Annexed and signed, this day of , .

[Signature of witness.]

[Signature of party.]

493. The Same; For a Sum of Money at a Future Day, with Interest Periodically Meanwhile.

[As in Form 491, substituting for the words between the † †, the following:] unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of dollars [stating the whole principal secured], on the day of , which will be in the year one thousand eight hundred and with interest thereon from the date hereof [or, from the day of ,] at the rate of per cent, per annum [or, with legal interest thereon], payable semi-annually [or, quarterly], on the day of , and [designating the months intended] in each year, until the whole of said principal sum be paid.

494. The Same; For Payment in Equal Annual Installments, with Interest Annually on What Remains Unpaid.

[As in Form 491, substituting for the words between the † †, the following:] unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of dollars [stating the whole principal secured], in equal annual payments, from the date hereof [or, commencing on the day of , 18], with interest thereon at the rate of per cent. per annum [or, with legal interest thereon], payable annually with such installments [or, semi-annually, or, quarterly, on the days of , naming the months for payment of interest, in each year].

495. The Same; For Payment in Unequal Installments, with Interest.

[As in Form 491, substituting for the words between the † †, the following:] unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of dollars [stating the whole principal secured], in manner following—that is to say, the sum of dollars on the day of next; the sum of dollars on the day of , ; and the remaining sum of dollars in from the said last-mentioned date, together with the interest at the rate of per cent. per annum [or, with legal interest on the whole sum remaining unpaid, at the time of each payment].

496. The Same; For Payment in Installments, with Interest on Each Installment as it Falls Due.

[As in Form 491, substituting for the words between the † †, the following:] unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of dollars [stating the whole principal secured], with interest at the rate of per cent. per annum [or, with legal interest], said principal to be paid in equal annual installments each, with the interest on such installment, on the day of in each year.

497. Chattel Mortgage to Secure a Note.

[As in Form 491, substituting for the words between the **, the following:]

UPON CONDITION, however, that if the said party of the first part shall well and truly pay to the said party of the second part, his executors, administrators, or assigns, a certain promissory note, made by , for dollars, bearing date the day of , , and payable after date to the order of [or may say, his promissory note, of which the following is a copy, *setting it forth*], according to the tenor thereof, then this conveyance shall be void; otherwise, to remain in full force. And in case default shall be made in payment of said note

498. Chattel Mortgage to Secure an Indorser.

[As in Form 491, substituting for the words between the **, the following:]

UPON CONDITION, however, that if the said party of the first part shall well and truly pay a certain promissory note, made by for dollars, bearing date the day of , , and payable after date, to the order of , and indorsed by the party of the second part [or may say, his promissory note, indorsed by the party of the second part, of which the following is a copy, *setting it forth*], according to the tenor thereof, then this conveyance shall be void; otherwise, to remain in full force. And in case default shall be made in payment of said note

499. Chattel Mortgage to Secure Payment of Numerous Notes, and Indemnity Against Certain Debts of the Mortgagee Assumed by the Mortgagor.

[As in Form 491, to the first *, continuing thus:]

UPON CONDITION, however, that the said party of the first part shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of dollars and cents, with interest, being the amount of promissory notes made by him, and described as follows, each bearing date the day of , , payable as follows: one note for dollars, payable at months from date; and one for dollars, payable at months from date [and so on]. AND upon the further condition, that if the said party of the first part will well and truly indemnify and save harmless the said party of the second part of, from, and against all of the notes remaining unpaid, which were given by said party of the second part to M. N. & Co., on the purchase of , which notes are particularly enumerated in Schedule B. hereto annexed; and also against all of the notes and debts, obligations or liabilities mentioned in Schedules C and D, hereto annexed, being debts of the party of the second part, which have been assumed by said party of the first part, then this conveyance shall be void; otherwise, to remain in full force.

AND the said party of the first part, for himself, his executors, administrators, and assigns, does covenant, promise, and agree, to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in the payment of either of said notes hereinbefore mentioned, given by said party of the first part to the said party of the second part, and the same shall remain due and unpaid for the space of days thereafter, then the sum remaining unpaid upon all of said notes may, at the option of the said party of the second part, his executors, administrators, or assigns, be considered due and payable immediately; and in case either of said

notes shall so remain unpaid for the space of days, or in case any recovery shall be had against said party of the second part, for or by reason of any note or notes, or debts mentioned in Schedules B, C, and D; then in that case it shall immediately thereupon be lawful for, and the said party of the first part hereby authorize and empower the said party of the second part, his executors, administrators, or assigns, with the aid or assistance of any person or persons, to enter the store, stable, dwelling-house, and other premises, and such other place or places as the said goods, chattels, and property are or may be placed in, and take and carry away the said goods, chattels, and property, and to sell and dispose of the same for the best price or prices he can obtain for the same, and out of the money arising therefrom to retain, take up, and pay the amount then remaining unpaid on said notes, whether the said notes shall have matured or not, and all charges touching the same, and also all moneys which may be recovered against him, the said party of the second part, for or on account of any of the notes or debts mentioned in either of the schedules to this mortgage, or any liability or charges he may incur on account of the same, or any part thereof, and also the expenses of such sale, and then, after retaining sufficient in his hands to pay off and discharge any of the said debts or notes mentioned in either of the schedules which may remain unpaid, and applying the said moneys thereto, rendering the overplus, if any, unto the said party of the first part, or to his executors, administrators, or assigns; and in case of such sale and disposition of said goods, chattels, and property, it shall and may be lawful for the said party of the second part to sell and dispose of the said property, goods, and chattels, together or separately, as he may prefer.

And until default be made in the payment of either of the said notes, and the same shall remain unpaid for ten days, or in any of the stipulations hereinafore set forth on the part of the parties of the first part, the said parties of the first part shall remain and continue in the quiet and peaceable possession of the said goods and chattels and property, and the full and free enjoyment of the same.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, this day of ,

In presence of

[Signatures and seals.]

[Acknowledgment.]

500. Chattel Mortgage to Secure a Surety in a Lease.

[As in Form 491, substituting for the words between the * *, the following:]

UPON CONDITION, however, that if the said party of the first part, his executors, administrators, or assigns, shall well and truly pay the rent to accrue on a lease made by M. N. to the said party of the first part, bearing date the day of , [and shall perform all the covenants on his part therein contained], and indemnify and save harmless the said party of the second part from and against all damage, costs, and expenses by reason of his having become a surety thereon, then this conveyance shall be void; otherwise, to remain in full force. And in case default shall be made in such payment [and performance]

501. Chattel Mortgage to Secure Future Advances.

[As in Form 491, substituting for the words between the * *, the following:]

WHEREAS, the party of the first part is indebted to the party of the second part, for , in the sum of [as appeared by the account between the

parties], and said party of the second part has agreed to make further advances of money and materials to enable the said party of the second part to complete his factory at _____, and commence to operate the same: Now, these presents are upon the condition, that if the party of the first part, his executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the party of the second part, his executors, administrators, or assigns, upon demand [or otherwise, as agreed], all the sums due and so to become due to the party of the second part, then this conveyance shall be void; otherwise, to remain in full force. And in case any default shall be made therein,

502. Chattel Mortgage, by a Corporation, to Trustees, in Trust for its Bondholders.

THIS INDENTURE, made the _____ day of _____, one thousand nine hundred and _____, between the _____ Company, of _____, formed under and pursuant to an act of the legislature of the state of _____, entitled "An Act to provide for the formation of _____ companies," passed _____, by articles of association duly made, executed, and filed on the _____ day of _____, in the office of the clerk of _____, hereinafter called the company, party of the first part, and W. V., W. X. and Y. Z., trustees, hereinafter called the trustees, of the second part, WITNESSETH as follows: That the company, in order to pay off and discharge certain debts and obligations incurred in the formation and operating of said company, and to enable it to conduct, operate, and continue the business of said company, and also in pursuance of the resolutions of said company, passed the _____ day of _____, a copy of which is hereto annexed, marked "A," and forming part of this indenture, has made and issued its several bonds, or obligations, all bearing even date herewith, by each of which said bonds it acknowledged itself indebted to _____, or bearer, in the sum of _____ dollars, lawful money of the United States of America, to the amount of _____ dollars, and numbering from one to _____, inclusive; each of said bonds being made payable to the said parties of the second part, or bearer, and each of said bonds being for the sum of _____ dollars, and payable at the said company's office, in _____, on or before the _____ day of _____, one thousand eight hundred and _____, with interest thereon, at the rate of _____ per centum per annum, payable semi-annually, at its office, in _____, on the _____ days of _____, and _____ in each year, until the whole of the said principal is paid.

NOW, THIS INDENTURE WITNESSETH, that the said party of the first part, in order to secure the payment of the said several bonds hereinbefore mentioned, as they respectively fall due in the hands of the *bona fide* holders thereof, and the interest thereon, and in consideration of the sum of one dollar, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents does grant, bargain, sell, assign, release, convey and confirm, transfer and set over unto the said parties of the second part, trustees, as aforesaid, or the survivor or survivors of them, and their successors or assigns, the leases, franchises, licenses and articles of personal property, goods, chattels, horses, stages, etc., etc., as follows:

1. All its right, title, interest, and claim in and to a certain grant or lease, dated on the _____ day of _____, A. D. _____, and made by M. N., of _____, of the first part, to O. P., and which has been duly assigned to the said company, covering six lots of ground on Avenue C and Eleventh street, in the Eleventh

ward of said city, and recorded in the register's office of _____, in Liber _____ of Conveyances, page _____, the _____ day of _____, _____, together with the appurtenances, and all the rights and privileges, interests which the company has or holds in or to the said lease, and the lands and premises described therein, and the buildings, sheds, and improvements thereon erected.

2. And also, all the franchises, licenses, rights, and privileges of running and operating its _____, as now owned and possessed by it, and conferred upon it by the authorities of _____, or otherwise.

3. And also, all the fixtures, implements, goods, wares and merchandise, and all other articles of personal property, now belonging to, and in the possession of said company in _____, and more particularly named and described in the schedule hereto annexed, marked B, and which said schedule forms part of this indenture:

TO HAVE AND TO HOLD, the same to the said parties of the second part, their survivor or survivors, or their successors or assigns, forever. And it is hereby further mutually declared, granted, and agreed by the said company, party of the first part, and the said parties of the second part, trustees, representing the rights and interests in the securities of the parties taking or holding the said bonds or obligations, in the form and manner following—viz., that if said company shall well and faithfully pay the said principal sum of _____

dollars, on the day when the same is made payable by this indenture, as above mentioned, according to the true intent and meaning thereof, with the interest due thereon, and also the interest which may become due thereon, on the days when the same is made payable, as herein mentioned, or shall deliver up, canceled, to the said parties of the second part all of the said bonds mentioned herein, then these presents shall cease and determine; but if default shall be made by said party of the first part, in the payment of the said bonds or obligations, at the time they shall fall due, according to the true intent and meaning thereof, or it shall fail to pay the interest at the time set forth herein, then it shall be lawful for the said parties of the second part, or the survivor or survivors of them, their successors and assigns, and it shall be their duty, and they are hereby authorized and empowered, either in person or by attorney, or by agents, to enter into, and upon, the lands and premises hereby granted, or intended so to be, and take possession thereof, and also to take possession of the said goods, chattels, and other articles mentioned in the said annexed schedule, and also the licenses, franchises, etc., of the said company, and to sell or dispose of the same, or any part thereof, at public auction, according to the statute in such cases made and provided; and also to sell the said articles of personal property mentioned in the annexed schedule, at public auction, at the best price they can obtain for the same, and out of the proceeds arising from such sale to defray the expenses of such sale, and their own just and lawful charges, and then pay over the proceeds to, and amongst the parties holding the said bonds or obligations, so far as may be necessary to pay the amount then due and in arrears upon the same, and the balance of the proceeds, if any there be, to be paid over to the company, or its assigns. And it is further agreed by the company, that policies of insurance shall be effected by the company upon the said buildings, implements, goods, chattels, and personal property mentioned in the schedule, against loss or damage by fire, to the amount of at least _____ dollars, and such insurance shall be continued from time to time, and the policies assigned to and placed in the hands of the

said parties of the second part, as an additional security for the payment of the said bonds or obligations.

IN WITNESS WHEREOF, the said Company has caused these presents to
[CORPORATE be signed in its name by its president, and its corporate seal to
SEAL.] be hereunto affixed, attested by its secretary, the day and year
Attest: first above written.

In presence of Secretary.

Company.

by President.

[*Acknowledgment.*]

For further and much better forms of corporate chattel mortgages, see chapter on MORTGAGES, under *Equipment Mortgage, Collateral Trust Mortgage*, etc.; also see General Index, and below under the various states.

503. Condition in a Mortgage of Stock, that the Mortgagee Shall not Sell until Default.

AND IT IS ALSO PROVIDED, that until default shall be made, in payment of the said sum of dollars and interest, or some part thereof, the said Y. Z., his executors, administrators, or assigns, will not sell or dispose of the said shares of stock in the said company so transferred to him as aforesaid, and will, from time to time, pay over unto the said A. B., his executors, administrators or assigns, any dividend or dividends, which he, the said Y. Z., his executors or administrators, shall, in the meantime, have received on account thereof.

504. Unqualified Reservation of Right of Possession until Default.

AND IT IS AGREED, between the said parties, that until default shall be made in payment of the said sum of dollars and interest, the said A. B., his executors, administrators, or assigns may hold, enjoy, and use the goods above mortgaged, as aforesaid, without the hindrance or interruption of the said Y. Z., his executors, administrators, or assigns.

505. Stipulation Requiring a Sale to be Made.

BUT IF DEFAULT shall be made in the payment of the principal or interest above mentioned, or any part thereof, then the said party of the second part, his executors, administrators, or assigns, are hereby required to sell the goods, chattels, and property, above granted, by public auction, or so much as shall be necessary, for the best price they can obtain, and out of the money to retain and pay the said sum above mentioned, with the interest and all expenses thereon, rendering the overplus, if any, unto the said party of the first part, his executors, administrators, or assigns.

506. Stipulation Regulating the Mode of Sale.

SAID SALE to take place at , after giving at least days' notice thereof, by posting up written notices in three different public places in the town, and by advertising once in the . And I hereby further authorize the person conducting said sale, to adjourn, if, in his opinion, necessary, the same, from time to time, until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected herewith, and convey absolutely all of my right and title therein.

NOTE.— See also form in chapter on PROMISSORY NOTES.

507. Mortgage of a Vessel.¹

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that we, A. B. [%ths], and C. D. [%ths], owners of the bark or vessel called the Mary, of _____, of the burden of _____ tons, or thereabouts, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to us in hand paid before the sealing and delivery of these presents by W. X. and Y. Z., the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell unto the said W. X. and Y. Z., their executors, administrators, and assigns, all of the said bark or vessel, together with all the masts, bowsprits, sails, boats, anchors, cables, and all other necessaries² thereunto appertaining and belonging:

TO HAVE AND TO HOLD, the said bark Mary, and appurtenances thereunto belonging, unto them, the said W. X. and Y. Z., their executors, administrators, or assigns, to the sole and only proper use, benefit, and behoof of them, the said W. X. and Y. Z., their executors, administrators, or assigns, forever. And we, the said A. B. and C. D., have, and by these presents do promise, covenant, and agree, for ourselves, our heirs, executors, and administrators, to and with the said W. X. and Y. Z., their heirs, executors, administrators, or assigns, to warrant and defend the said bark Mary, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

WHEREAS, A. B. and C. D. are justly indebted to W. X. and Y. Z. for certain sums of money advanced to them by said W. X. and Y. Z., on account of said bark Mary, which the account between the parties shows, and may also require further advances than the original debt, and may also become still further indebted for expenses and charges paid or incurred for them:

NOW, THE CONDITION of these presents is such, that if the said A. B. and C. D. will, on demand, pay all the sums due and to become due to the said W. X. and Y. Z., and shall, in all respects, comply with the terms and conditions hereof, then this conveyance shall be void; otherwise, to remain in full force.

The said W. X. and Y. Z. are not to be liable or responsible, in any way, for the debts or liabilities of said vessel.

IN WITNESS WHEREOF, the said A. B. and C. D. have hereunto set their hands and seals this _____ day of _____, _____.

In presence of

[Signatures and seals.]

508. Acknowledgment of a Chattel Mortgage.

STATE OF _____, }
County of _____, } ss.

BE IT KNOWN, that on the _____ day of _____, one thousand nine hundred and _____, before me, M. N., a notary public for the _____ of _____, duly commissioned and sworn, dwelling in the city of _____, came A. B. and C. D., to me well known to be the individuals described in and who executed the foregoing instrument, and severally duly acknowledged that they had executed the same as and for their voluntary act and deed.

WITNESS my hand and official seal, the day and year above written,

[SEAL.]

[Signature and title.]

¹ For a hypothecation on bottomry or things not clearly included in such a general respondentia, see chapter on BONDS. term, they should be expressly mentioned.

² If it is intended to give a lien on any

509. Annual Statement of Amount Claimed.¹

STATEMENT filed by Y. Z., the mortgagee in the mortgage of which the annexed is a copy:

I, Y. Z., the mortgagee mentioned in the mortgage of which the annexed [or, within] is a true copy, do hereby certify that the sum of dollars and interest thereon from the day of , , is still due on said mortgage; which sum constitutes the amount of my interest in the property therein mentioned and described.

Dated , the day of , .

[Signature of mortgagee.]

510. The Same; Where the Mortgage is Claimed as Security for Contingent or Unliquidated Demands.

STATEMENT filed by Y. Z., the mortgagee in the mortgage, of which the annexed is a true copy:

I, Y. Z., the mortgagee named in the mortgage of which the annexed [or, within] is a true copy, do hereby certify that the following notes, mentioned in said mortgage, all dated the day of , , are wholly unpaid — to wit [enumerating them].

And I claim the said property, by virtue of said mortgage, to the amount of said unpaid notes and interest as aforesaid. And I further claim the said property as security to me against any liability for or on account of my having indorsed the note of therein mentioned, which note is still unpaid; and the said unpaid notes of and interest, and security against my indorsement of said note of , constitute my interest in the property described in said mortgage.

Dated , the day of ,

[Signature of mortgagee.]

511. Notice of Sale under Mortgage.

By virtue of a chattel mortgage executed by A. B. to Y. Z., dated the day of , , and filed in the office of the county clerk of the county of [or, the town clerk of the town of , or, the register of the city and county of New York], on the day of , , and upon which default has been made, I will expose for sale at public auction, on day, the day of , , at o'clock, in the noon, at [designating the particular place of sale], the property mortgaged, consisting of 187 horses, 35 stages, 16 sleighs, 250 tire bolts, 800 weight of iron, 800 weight of steel, two large iron safes. [The terms of sale to be made known on the day of sale.]

Dated , the day of , .

[Signature of attorney or auctioneer.]

512. Terms of Sale.

TERMS OF SALE.—One-third of the amount of the purchase money in cash, payable immediately after the sale, to the trustees named in the mortgage.

The balance of said purchase money in twelve equal monthly payments, for which approved indorsed promissory notes, bearing interest from date,

¹ In most states it is not a sufficient statement to indorse on the mortgage already on file, that it is refiled and re-

newed, with the date. There must be a statement exhibiting the interest of the mortgagee.

falling due on, etc., are to be given, and the purchaser to execute an approved chattel mortgage to the said trustees on the property so sold to him, to secure the payment of the said promissory notes;—notes and mortgage to be given in five days from the purchase hereof.

Property to be delivered when notes are given and mortgage executed.

If the purchaser does not comply with the terms of sale, then the property to be resold at his expense and loss, and no benefit to accrue to him on such resale, and he will be held responsible for any deficiency from his hid.

[Date.]

513. Purchaser's Memorandum.

I have purchased the above property for the sum of dollars, on the terms above set forth.

[Signature of purchaser.]

514. Notice of Adverse Claim, Read at the Sale, to Warn Purchasers.

I, M. N., hereby give notice, that I have a mortgage on the property of A. B., now offered for sale, which is of prior date to the mortgage, under which this sale takes place, being dated , , which was then duly filed; and dollars, with interest thereon, from the day of , 18 , is unpaid on my said mortgage, and is now due and collectible. Who-soever buys this property must buy it subject to my mortgage.

515. General Form of Affidavit of Interest.

STATE OF , }
County of , } ss.

I, , the mortgagee within named, do certify and state that there remains due and unpaid on the mortgage, of which the foregoing is a true copy, dollars. and this copy and statement are filed to continue the notice required by the statute made and provided for the renewal of chattel mortgages.

Sworn to before me, this day of , A. D. .

II. STATUTORY PROVISIONS AND FORMS IN COMMON USE IN THE SEVERAL STATES.

A very full digest of the statutory provisions and also of the forms prevalent in the several states is given below.

In most of the states, an affidavit of interest or of "good faith" is required to be attached to a chattel mortgage at the time of its execution, or at some subsequent period.

Such affidavits are to be made by the mortgagee, and, in some states, by both parties.

ALABAMA.

No statutory form. Conveyance of personal property to secure debts or provide indemnity must be recorded in county where grantor resides and in county where property is at date of conveyance, unless property is immediately removed to county of grantor's residence. If property is removed to another county, must be again recorded in the county to which removed within three months after removal. II Code of 1907, § 3376.

If personal property is subject to any lien, encumbrance, mortgage or trust for security of debts when removed to this state, the writing evidencing the lien, encumbrance, mortgage or trust must be recorded in the county into which it is brought and remain within three months after the arrival of such property. Ibid., § 3377.

If tenant for life or years in personal property removes to this state with such property, the conveyance creating such estate must be recorded in the county to which it was brought within twelve months thereafter. If such property is removed to another county, then in such county within four months after its removal thereto, or such property must be taken to vest absolutely in such person as to purchasers or creditors without notice. *Ibid.*, § 3378.

Contracts for conditional sale of railroad equipment or rolling stock, by which vendor retains title until payment of purchase money and the purchaser has possession, are void against judgment creditors of purchaser without notice, or purchasers from him for value without notice, unless such contracts are in writing and recorded within three months in office of the judge of probate of the county where such corporation may have its principal office or place of business and if it has not in this state a principal office or place of business, then in the office of the secretary of state and in addition all cars and engines must have thereon plainly marked the name of the vendor. *Ibid.*, § 3393.

All other contracts for conditional sale of personal property by which vendor retains title until purchase money is paid and purchaser has possession, and all contracts for lease, rent or hire of personal property, by which the property is delivered to another on condition that it shall belong to him whenever the amount paid shall be a certain sum or the value of the property, the title to remain in vendor until such sum or value is paid, are as to such condition void against purchasers for a valuable consideration, mortgagees and judgment creditors without notice thereof, unless in writing and recorded in office of judge of probate of county in which party so obtaining possession resides and also in county in which such property is delivered and remains. If before payment, the property is removed to another county, the contract must be again recorded within three months from time of removal in county to which it is removed. If such property is brought into this state while subject to such condition, the contract must within three months be recorded in county into which the property is brought and remains. *Ibid.*, § 3394.

Such contract, when acknowledged or proved and recorded must be received in evidence without other proof of execution and if original is lost or destroyed or party offering a certified transcript has not the custody or control of original, a certified transcript from record must be received in evidence without further proof of the execution of the original. *Ibid.*, § 3395.

Power of sale usually contained in mortgage. Foreclosure is by action of detinue. *Ibid.*, §§ 3788-3792.

Conveyances of personal property to secure debts or to provide indemnity are inoperative against creditors and purchasers without notice until recorded, unless the property is brought into state subject to such incumbrances, when three months are allowed for registration. If property removed to different county from that in which grantor resides, conveyance must be recorded in such county within three months from removal, or it ceases to have effect after such three months against creditors or purchasers of the grantor without notice. *Ibid.*, § 3386.

This includes absolute conveyances of personal property, defeasible by a defeasance or other instrument and in such case the defeasance must be recorded as above or it will be void as to creditors and purchasers without notice. *Ibid.*, § 3387.

All loans in writing, wills or conveyances, creating estates in personal property on condition, in reversion or remainder or in which the use is separated from the right, other than conveyances above specified, and under which possession is suffered to remain for three years with the party entitled to the estate or use, vest an absolute estate in the person so having possession for such number of years as to creditors and purchasers of such person,

unless such loan, will or conveyance is recorded within such time in the county where such property is. *Ibid.*, § 3389.

All loans of personal property not in writing vest an absolute estate in the person in possession under such loan as to purchasers and creditors of such person after three years from the commencement of such loan, unless within that time the lender commences an action at law in good faith for the recovery of the property. *Ibid.*, § 3390.

All conveyances of personal property in favor of minor children, except by will, where the custody, control and visible possession thereof is suffered to remain by the donor with the father or mother of such children vest an absolute estate in such father or mother so in possession in favor of the purchasers from and creditors of such father or mother without notice, unless the conveyance is recorded within three years after such possession commenced in this state, in the county of residence of father or mother. *Ibid.*, § 3391.

Parol gifts of personal property are inoperative, until the custody, control, management and use of the property passes from the donor to the donee and is possessed by such donee or his agent. When donee is a minor living with his parents or either of them the possession of the father or parent with whom he is living must be considered the possession of the child. *Ibid.*, § 3392.

Homestead exemption shall not extend to mortgage, but mortgage or other alienation of homestead by owner, if married man, shall not be valid without voluntary signature and assent of wife. *Const.*, Art. XIV, § 2.

ALASKA.

Chattel mortgage or conveyance intended to operate as such shall be kept by the commissioner in his office upon presentation to him and payment of fees. It becomes invalid against creditors, subsequent purchasers or mortgagees in good faith at end of year, unless within thirty days next preceding the expiration of the year the mortgagee, his agent or attorney, shall make and annex to the instrument, or copy on file as aforesaid, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned and such affidavit must be renewed each year within thirty days next preceding the time when such mortgage would otherwise cease to be valid. A copy certified by commissioner including the affidavit may be received in evidence to show the receipt and filing according to the endorsement of the commissioner thereon and of any other fact. *Code of 1900*, p. 378, §§ 125-129, *Civil Code*.

Chattel mortgage is valid against creditors, subsequent purchasers and incumbrances in good faith for value only if property is delivered to and retained by mortgagee or mortgage provides that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of all the parties thereto, or in case any party is absent from the precinct where such mortgage is executed at the time of the execution thereof, an affidavit of those present and of the agent or attorney in fact of such absent party that the same is made in good faith to secure the amount named therein and without any design to hinder, delay or defraud creditors and acknowledged and filed as provided. *Ibid.*, p. 420, § 311.

Subject to the provisions of section 311, one member of a firm of general partners may alone execute a mortgage of personal property and make affidavit thereon required on behalf of the firm and, in case of a corporation, the president, secretary or managing agent thereof may make affidavit on its behalf. *Ibid.*, p. 420, § 312.

Such mortgages must be acknowledged like conveyances of real property. *Ibid.*, p. 421, § 313.

Chattel mortgage, with affidavits of parties or copy, certified by person before whom acknowledged, must be filed in office of recorder of precinct where mortgagor resides and of precinct where property is at execution of mortgage, or, if nonresident, then in office of recorder of precinct where

property is at execution. A mortgage so filed shall be void as against creditors or subsequent purchasers or mortgagees in good faith, after a year from filing unless within thirty days next preceding the expiration of the year, a copy, with verified statement of the interest of mortgagee at time of renewal is again filed in the same office. Such renewal extends the lien one year as against creditors, purchasers, and encumbrancers. *Ibid.*, p. 421, §§ 314, 315.

Any subsequent mortgagee may at any time during the existence of a prior mortgage which has been so extended or renewed, pay the amount of interest and debt owing and secured thereby, as shown by verified statement and mortgage or deposit the full amount thereof with the recorder of the precinct wherein such verified statement and mortgage are filed, subject to order of mortgagee, his personal representatives or assigns, and the receipt or duplicate for the payment or deposit shall be filed and attached to mortgage and thereby the subsequent mortgagee is subrogated. *Ibid.*, p. 421, § 316.

Mortgaged property may be taken on attachment or execution of mortgagor's creditor, but before taking the property the officer must pay or tender to mortgagee or the assignee thereof the amount of mortgage debt and interest or must deposit the amount thereof with the recorder of the precinct in which mortgage is filed, payable to the order of the mortgagee or assignee. When property thus taken is sold, proceeds of sale go first to the repayment of the sum paid to the mortgagee or assignee, with interest from the date of such payment and the balance, if any, as proceeds of sale under execution are applied in other cases. *Ibid.*, p. 421, § 317.

Certified copy of mortgage by recorder in whose office same is filed may be read in evidence, if original is lost or out of the power of person wishing to use it. *Ibid.*, p. 422, § 318.

Action for foreclosure of mortgage or enforcement of any lien on personal property may be commenced and conducted like foreclosure of mortgages and liens upon real property and the same may be joined in an action for the recovery of the possession of the property mortgaged, but mortgagor may insert in mortgage a clause authorizing the marshal to execute the power of sale therein granted to the mortgagee, his legal representatives and assigns, in which case the marshal at the time of default, at the request of the mortgagee, must advertise and sell the whole or any part of the mortgaged property, wherever it may be and mortgagee, or his representatives or assigns may in good faith purchase the property so sold or any part thereof. The marshal may require an indemnity bond from the mortgagee, or his assigns, before taking possession of or selling the mortgaged property. *Ibid.*, p. 422, § 320.

When debt or obligation paid or discharged, acknowledgment of satisfaction must be indorsed by mortgagee, his representatives or assigns upon the mortgage or copy filed. *Ibid.*, p. 422, § 321.

Any mortgagor selling the property or any part thereof to a third party, for a valuable consideration, without informing him of the existence and effect of such mortgage shall forfeit and pay to the purchaser twice the value of such property so sold. *Ibid.*, p. 422, § 322.

The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of the mortgagor. *Ibid.*, p. 423, § 323.

ARIZONA.

No chattel mortgage shall have any legal force or effect except between the parties, unless the residence of mortgagor and mortgagee, the sum to be secured, the rate of interest to be paid, when and where payable, shall be set out in the mortgage and the mortgagor and mortgagee must make affidavit to the effect that the mortgage is bona fide and without any design to defraud or delay creditors, which affidavit shall be attached to mortgage. Revised Statutes, 1901, § 3282.

Every mortgage, deed of trust or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale in parcels in the regular course of business of such merchandise and contemplating a continuance of possession of such goods and control of said business by sale of said goods by said owner shall be deemed fraudulent and void. *Ibid.*, § 3283.

Every chattel mortgage, deed of trust or other instrument in writing, intended to operate as a mortgage of or lien upon personal property, not accompanied by immediate delivery and followed by actual and continued change of possession, shall be absolutely void against creditors of mortgagor or person making the same and as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument or a copy is forthwith deposited with and filed in office of county recorder of county where property is situated and also, if mortgagor or person making same be resident of territory, in county where he resides. *Ibid.*, § 3284.

Certified copy may be used as evidence. *Ibid.*, § 3286.

Mortgagor cannot remove property pledged from the county or otherwise sell or dispose of same without consent of mortgagee. In case of any violation of this provision, mortgagee is entitled to possession of property and to have same then sold for the payment of his debt, whether same has become due or not. *Ibid.*, § 3289.

If property removed out of county where mortgage recorded, it must be recorded within new county within one month after such removal, or as to property so removed be void so long as not recorded as to all creditors and purchasers thereof for valuable consideration without notice. *Ibid.*, § 3291.

A mortgage of personal property, where the time of payment is therein fixed, may be foreclosed by notice and sale, unless a stipulation in writing to the contrary has been agreed upon by the parties or by action in the proper court. Notice must contain full description of property mortgaged, together with time, place and terms of sale. *Ibid.*, §§ 3292, 3293.

And must be served on the mortgagor and all purchasers from him subsequent to the execution of mortgage, and on all persons having recorded liens upon same property, junior to mortgage. *Ibid.*, § 3294.

After service of notice, it must be posted in three public places in the county at least ten days before date of sale and be published at least once in a newspaper published in the county. The purchaser shall take all the title and interest on which the mortgage operated. *Ibid.*, § 3295.

Attorneys' fees may be collected if provided for in note or mortgage. *Ibid.*, § 3296.

Officer or person conducting the sale shall execute to purchaser bill of sale of property. *Ibid.*, § 3297.

Evidence of service, publication and posting of notice aforesaid and of sale made in accordance therewith, together with any postponement or other material matter shall be perpetuated by affidavits reciting the facts, attached to bill of sale, and shall constitute the return of the officer or person making sale and be receivable in evidence to prove the facts they state. *Ibid.*, § 3298.

Such sales made as above are valid as to property sold to purchaser in good faith. *Ibid.*, § 3299.

The right to foreclosure, as well as the amount due, may be contested by anyone interested in so doing and proceedings may be transferred to the district court, for which purpose an injunction may issue if necessary. *Ibid.*, § 3300.

Where chattel property is pledged as security for an indebtedness, unless provision is made by agreement in writing therefor, property may be sold for nonpayment of indebtedness by giving the pledgor or any purchaser or assignee under him ten days' notice in writing of intention to sell the same and make application of proceeds to satisfaction of debt, and by posting for same time in three public places in the county of pledgor's residence and by publishing at least once in a newspaper published in the county, a notice containing a description of the property to be sold and the time, hour and

place of sale. If redemption is not made before day thus fixed, pledgee may sell at public auction to highest bidder the pledged property or so much thereof as necessary to pay debt, interest and all costs of making sale and may be a bidder at such sale. He shall apply proceeds first to payment of costs, second to payment of debt and return surplus if any of proceeds and any unsold property to pledgor or his assigns. *Ibid.*, § 3301.

Such pledgee may commence action for foreclosure of such collaterals or pledges and the court shall determine all issues presented as in other cases and render judgment for amount due from pledgor and award execution for the sale of the collaterals or pledges and execution for any balance, or render any judgment necessary to carry out any written agreement of the parties concerning the subject matter, but in all cases a sale may be ordered, unless there is a written stipulation to the contrary. *Ibid.*, § 3302.

516. Chattel Mortgage.

THIS MORTGAGE, made the day of , in the year one thousand nine hundred and , by , of the county of , in the of , mortgagor , to , of the county of , in the of , mortgagee .

WITNESSETH, that the said mortgagor mortgage to the said mortgagee all that certain personal property situated and described as follows, to wit: [description] as security for payment the said mortgagee , of dollars of the United States of America, on the day of , in the year one thousand nine hundred and , with interest thereon at the rate of per cent. per , payable at , according to the terms and conditions of a certain promissory note of even date herewith, and in the words and figures as follows, to wit: [copy of note]

IT IS ALSO AGREED, that if the mortgagor shall fail to make any payment as in the said promissory note provided, then the mortgagee may take possession of the said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds pay the whole amount in said note specified, and all costs of sale, including counsel fees not exceeding per cent. upon the amount due, paying the overplus to the said mortgagor.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

TERRITORY OF ARIZONA, }
County of , } ss.:

 , the mortgagor within named, and , the mortgagee within named, being first duly sworn, each for himself and not one for the other, does depose and say; that the foregoing mortgage is made in good faith, and without any design to hinder, defray or defraud any creditor or creditors.

[Signatures.]

Subscribed and sworn to before me,
this day of , 19 .

 , Notary Public.

(My commission expires .)

ARKANSAS.

Chattel mortgages must be proven and acknowledged like deeds of real estate. The county of mortgagor's residence, or, if a nonresident, the county of the property's location, is the county of record. Any mortgage or conveyance intended to operate as a mortgage of personal property or any deed of trust upon personal property which shall be filed with any recorder upon which is endorsed the following words: "This instrument is to be filed but not recorded," signed by mortgagee, his agent or attorney, is a lien upon the property and a certified copy may be received in evidence. Digest of Statutes, 1904, §§ 5395, 5407, 5408.

In absence of stipulations to contrary, mortgagee shall have legal title to property and right of possession. Such trust deeds or mortgages so endorsed may be withdrawn by the mortgagee or mortgagor if the mortgage be satisfied or cancelled. *Ibid.*, §§ 5410, 5413, 5414.

Before any action to foreclose or replevy, the mortgagee, trustee or other person shall make and deliver to mortgagor a verified statement of his account, showing each item, debit and credit, and the balance due, but if the mortgagor disposes or attempts to dispose of any of the property mortgaged, or absconds or removes from the county, such statement shall not be necessary. *Ibid.*, § 5415.

At all sales of personal or real property under mortgages and deeds of trust, such property shall not sell for less than two thirds of the appraised value thereof. But if property shall not sell at first offering for two-thirds of amount of appraisement, then in case of personal property another offering shall be made sixty days thereafter, at which the sale shall be to the highest bidder without reference to the appraisal. Appraisal to be made on application to some justice of the peace of the county in which the property is held or situated for appointment of three disinterested householders of the county as appraisers, who shall take and subscribe oath or affirmation before such justice that they will well and truly view and appraise the property. Any two may make report in writing, attached to the oaths taken as aforesaid, and deliver to person making sale and held by him, subject to inspection of all parties interested. *Ibid.*, §§ 5416-5418.

517. Chattel Mortgage with Power of Sale.

THIS INDENTURE, made this day of , 19 , between , part of the first part, and , part of the second part;

WITNESSETH, that for and in consideration of the sum of dollars, the receipt whereof is hereby acknowledged, the part of the first part has bargained, sold, granted, conveyed, and by these presents hereby bargain, sell and convey to the part of the second part, executors, administrators and assigns, the following described property, to wit [*description*]

TO HAVE AND TO HOLD the same unto the part of the second part, executors, administrators and assigns forever; conditioned, however, as follows:

WHEREAS, the said part of the first part is indebted to the part of the second part in the sum of dollars, payable as follows, to wit: [*description*] and for all other moneys, advances, goods, wares, merchandise, supplies, services, etc., furnished by the part of the second part to the part of the first part, up to the foreclosure of this instrument, with interest at the rate of per centum per annum from date of furnishing until paid. In the event any default shall be made in any of the payments, either principal or interest, as above set out, then all shall become due and payable at once.

Now, if the part of the first part shall well and truly pay to the part of the second part the sum hereinbefore mentioned, and all other indebtedness which may then be due the part of the second part by the part of the first part, together with the cost of this trust, on or before the maturity hereof as above set out, then this conveyance shall be void; otherwise to remain in full force and effect. And in case any default shall be made in the payment of said indebtedness, as herein set forth, or should the part of the first part, prior to the said maturity hereof, sell or attempt to sell, ship, remove or otherwise dispose of the property herein conveyed, or any part thereof, without the consent of the part of the second part, then, in either event, the part of the second part, agent or attorney, is hereby authorized and empowered to take charge of said property on demand, without process of law, and sell and dispose of the same, or so much as will be necessary, at public sale, at , for cash in hand, upon two weeks' notice in some newspaper published in the county, or by written notices posted in five conspicuous places near the property, at which sale any of the parties hereto may purchase as other parties, and out of the proceeds of said sale the said part of the second part to retain the sum due as herein set forth, and the cost of this trust and of sale, rendering the overplus, if any, to the said part of the first part, executors, administrators or assigns.

GIVEN under hand and seal , this day of , A. D. 19 .

[Signatures and seals.]

518. Chattel and Crop Mortgage.

THIS INDENTURE, made and entered into this the day of , A. D. 19 , by and between , of the county of , state of Arkansas, party of the first part, and , of the town of , county and state aforesaid, party of the second part:

WITNESSETH, that for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, the party of the first part has bargained, granted and sold, and does by these presents grant, bargain and sell to said party of the second part, heirs, administrators and assigns, all right, title and interest in acres (more or less) of cotton, and acres (more or less) of corn, which cultivating and to cultivate and produce this year on what is known as farm, in the county and state aforesaid, and the following described personal property, to wit: [description]

To HAVE AND TO HOLD all the above described property unto the said party of the second part, heirs, executors, administrators, or assigns, forever. And covenant that the lawful owner of said property and ha a good right to sell and convey the same; such sale and conveyance is made upon the following express conditions, to wit: WHEREAS, the said party of the first part is now indebted to the party of the second part in the sum of dollars, as evidenced by promissory note, dated the , A. D. 19 , and whereas, the said second party undertakes and is to furnish the party of the first part, during the year 19 with supplies, provisions and such other articles of goods, wares and merchandise, and moneys, as may see proper, and for all indebtedness that may accrue and remain due and

unpaid after the said year 19 until final settlement of said account, to be evidenced by the books of the party of the second part.

Now, if said first party shall well and truly pay to said second party whatever may be due , together with the cost of executing this trust, on or before the day of , 19 , then this deed shall be null and void; but in case any default shall be made in the payment of said indebtedness as herein set forth, or in case of death of the first party, or should the first party, prior to said day of , 19 , sell, or attempt to sell, ship, remove, abandon, or otherwise dispose of the property herein conveyed, or any part thereof, without the written consent of said second party, then, in either event, the said second party, or the heirs, assigns, or legal representatives of , are authorized, empowered and directed to take possession of the above described and bargained property on demand, without process of law, or so much thereof as will pay off, satisfy and discharge said indebtedness, and to sell the same to the highest bidder, for cash, at public auction, at , in said county, on first giving at least ten days' notice by written advertisements, posted up in five public places in township of said county and state, designating the property to be sold, the time, terms and place of sale, and with the proceeds of such sale pay first the expense of this trust and the sale thereunder; secondly, to pay off and discharge all the indebtedness aforementioned, together with all interest that may have accrued thereon, and the overplus, if any, to the said first party, heirs, executors, or legal representatives. And the said first party hereby expressly waive and relinquish all claim, right or advantage, which may or could have under the present existing laws of this state, as against this mortgage. Said first party to retain possession of said above described property till condition is broken.

IN TESTIMONY WHEREOF, have hereunto set hand , this day and date first above written.

[Signatures and seals.]

WITNESS.

[Signatures.]

519. Deed of Trust — Personality.

KNOW ALL MEN BY THESE PRESENTS: that , for and in consideration of the sum of one dollar in hand paid, and the premises hereinafter set forth, do hereby grant, bargain and sell unto , and unto heirs and assigns forever, the following property: [description] To hold the same in trust for .

This sale is on condition that whereas justly indebted unto the said in the sum of dollars, evidenced by .

Now, if said shall well and truly pay to said the sum hereinbefore mentioned, and all other indebtedness which may then be due said by said , together with the cost of this trust, on or before the day of , 19 , then this conveyance shall be void; otherwise to remain in full force and effect. And in case any default shall be made in the payment of said indebtedness as herein set forth, or should the said , before said indebtedness is fully paid, sell, attempt to sell, ship, remove or

otherwise dispose of the property herein conveyed, or any part thereof, without the consent of said _____ in writing, then, in either event, the said trustee, his agent or attorney, is hereby authorized and empowered to take charge of said property on demand, without process of law, and sell or dispose of the same, or as much thereof as may be necessary, at public sale at _____, in the county of _____, for cash in hand, upon two weeks' notice in some newspaper published in the county, or by written notices posted in five conspicuous places near the property, at which sale any of the parties hereto may purchase as other parties, and out of the proceeds of sale said trustee shall retain the cost of this trust and of sale, including a reasonable compensation for his trouble, and the amount which may be owing to said _____ by the said _____, and the balance, if any, shall be paid to said _____, his executors, administrators or assigns. And in case, from any cause whatever, said trustee shall fail, refuse or be incapacitated to act as such, the said _____ shall have the power, by indorsement on this deed, to appoint some other person to act as trustee, who shall have all the powers and exercise all the duties of the trustee herein mentioned. All rights of appraisalment, sale or redemption under the laws of Arkansas are hereby waived.

WITNESS _____ hand and seal on this _____ day of _____, 19 _____.

[Signatures and seals.]

520. Deed of Trust — Debt and Supplies.

THIS DEED OF TRUST, made and entered into this _____ day of _____, 19 _____, between _____, of the county of _____, and state of Arkansas, of the first part, and _____, of the county of _____, and state of Arkansas, of the second part, witnesseth:

THAT WHEREAS, said party of the first part being indebted to the said party of the second part in the sum of _____ dollars, to be evidenced by an open account for merchandise, plantation supplies and cash to be furnished by said second party, in such quantities and proportions, and at such times during the year 19 _____ as to second party may seem proper, and due October 15, 19 _____, with ten per cent. interest on account for merchandise and supplies, after maturity until paid; advances in cash to bear interest at 10 per cent. per annum from date until paid. It is further agreed, that if necessary to enable the first party to cultivate, gather and market _____ crop, the second party agree to furnish the further sum of _____ dollars on the same terms as above, and due, on demand, after December 25, 19 _____, said second party to be the judge of such necessity, and this deed of trust is given to secure this sum also; the party of the first part having agreed to secure the prompt payment of the above described indebtedness when due.

THEREFORE, in consideration of the premises, and of the sum of one dollar to the party of the first part paid by _____, who is hereby constituted trustee herein, the receipt of which is hereby acknowledged, the party of the first part has this day granted, bargained and sold, and by these presents do give, grant, bargain, sell and convey to said trustee, and his successors, the following described property, located in the county of _____, and state of Arkansas, viz: _____ entire crops of every kind and description to be raised by _____ family, and hands under _____ control, and interest in all crops raised by

renters or share hands or by virtue of any claim for advances made to tenants or laborers on the farm during the present year 19 on , in township or elsewhere in the aforesaid county; said crops to consist in part of acres in cotton, and acres in corn. The cotton to be delivered to said , and , at store in , Arkansas, and upon the following described property, to wit: [description] And the party of the first part covenant and agree to warrant and forever defend the title to said property, and that the same is free from all incumbrance, except , with its appurtenances to the said trustee and his successors, subject, however, to the following limitations and conditions, to wit: Should the party of the first part promptly pay the above stated indebtedness on or before the dates of maturity, as above stated, with all costs incurred herein, then this instrument to be void; but in any default thereof, the said trustee, at the written request of said party of the second part, or their legal representatives or assigns, shall take possession of said property, and for this purpose, is authorized to employ all necessary labor; and, after giving notice of the time, place and terms of sale by advertisements posted at least days before the day of sale, in three public places in county, shall sell the same, at public auction, to the highest bidder, for cash, at such time and place as he shall designate in said advertisements, and shall execute a written conveyance of the same to the purchaser or purchasers. The proceeds of said sale shall be applied to the payment of said indebtedness and all costs incurred herein; and if there be a surplus it shall be refunded to the party of the first part. If said property shall at any time become endangered as a security for said indebtedness, or any part thereof removed from the premises, the trustee may take the same in his possession and hold or control the same until said debts and all costs are liquidated by payment thereof, or sale of said property, in the same manner as if the indebtedness was due; but demanded by the trustee, said party of the first part shall hold the same, subject to this deed of trust.

In case of failure or inability on the part of said trustee to execute the trust herein confided, the party of the second part, their heirs, executors, administrators or assigns, can, at any time, appoint a trustee to act in his stead, which appointment shall be written, and shall vest in such succeeding trustee all the title and power herein conferred on his predecessor. And I hereby waive any and all rights of appraisalment, sale or redemption under the laws of Arkansas.

IN TESTIMONY WHEREOF, the party of the first part hereto set hand and seal the date first above written.

[Signatures and seals.]

Witness:

[Signature.]

CALIFORNIA.

Mortgages may be made on growing crops, including grapes and fruit, and on any personal property capable of manual delivery, except articles of wearing apparel and personal adornment and stock in trade of merchant. Civil Code of 1872, as amended to 1909, inclusive, § 2955.

Chattel mortgage may be in substantially the following form:

521. Chattel Mortgage, Statutory Form.

This mortgage, made the _____ day of _____, in the year _____, by A. B., of _____, by occupation a _____, mortgagor, to C. D., of _____, by occupation a _____, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of _____ dollars, on [or before] the day of _____, in the year _____, with interest thereon [or, as security for the payment of a note or obligation, describing it, etc.] A. B. Ibid., § 2956.

Chattel mortgage is void against creditors and subsequent purchasers and encumbrancers in good faith and for value, unless accompanied by affidavit of all parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors, and unless acknowledged and recorded like grant of real property. Ibid., §§ 2957, 2963.

Mortgage of vessel or part of it under United States flag is void against any person (other than mortgagor, his heirs and devisees, and persons with actual notice), unless recorded in office of collector of customs where vessel registered or enrolled. Ibid., § 2958.

Chattel mortgage must be recorded in office of county recorder where mortgagor resides, if resident of State, and also in county where property situated or to which it is removed. Ibid., § 2959.

Property in transit from mortgagee to county of mortgagor's residence or to a location for use, is, during a reasonable time for such transportation, deemed situated in county where mortgagor resides or where intended to be used. Ibid., § 2960.

Personal property used in conducting business of common carrier is also deemed, within the meaning of these provisions relating to chattel mortgages, to be situated in county of carrier's principal office or place of business. Ibid., § 2961.

Chattel mortgage embracing several things of such character or so situated that separate mortgages would have to be recorded in different places, is valid only as to things as to which duly recorded. Ibid., § 2962.

Certified copy of chattel mortgage once recorded may be recorded in any other county with the force and effect of a record of the original. Ibid., § 2964.

When personal property mortgaged is removed from county where situated, lien is not affected for thirty days after removal but, after that period, the property is exempted from mortgage, except as between the parties, unless mortgagee causes it to be recorded in county to which removed or takes possession of it and disposes of it as a pledge for payment of debt, though the debt is not due, and this the mortgagee may do, if the mortgagor voluntarily so removes it or permits its removal. Ibid., §§ 2965, 2966.

Mortgagee of personal property when debt becomes due may foreclose mortgagor's right of redemption by sale of property made in the manner and upon the notice prescribed in case of pledges or by proceedings under the Code of Civil Procedure. Ibid., § 2967.

Before sale of pledged property, the pledgees must demand performance from debtor, if he can be found, and pledgee must give actual notice to pledgor of time and place of sale, at such reasonable time before sale as will enable pledgor to attend. Notice of sale may be waived by pledgor at any time but is not waived by mere waiver of demand of performance. The sale must be made by public auction, in manner and on notice of sale of personal property under execution. Ibid., §§ 3001-3003, 3005.

Section 2957 and sections 2959 to 2966 do not apply to mortgage of ship or part of it under flag of United States. Ibid., § 2971.

Lien of mortgage on growing crop continues after severance, whether remaining in original state or converted into another product, so long as remains on mortgagor's land. Ibid., § 2972.

Chattel mortgages other than those mentioned in section 2955, and mortgages not made in conformity with the above provisions, are valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof. *Ibid.*, § 2973.

A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property. *Ibid.*, § 2922.

Title acquired by mortgagor subsequent to execution of mortgage inures to mortgagee as security. *Ibid.*, § 2930.

Power of sale may be conferred by a mortgage upon mortgagee or any other person, to be exercised after breach of the obligation for which the mortgage is security. *Ibid.*, § 2932.

Power of attorney to execute mortgage must be in writing, acknowledged and recorded like powers of attorney for grants of real property. *Ibid.*, § 2933.

Assignment of mortgage may be recorded like a mortgage and the record is notice to persons subsequently deriving title to mortgage from assignor. *Ibid.*, § 2934.

When the mortgage is security for money due or to become due on note, bond, or other instrument designated in mortgage, record of assignment is not notice to mortgagor, heirs or representatives, so as to invalidate any payment to person holding the note, bond, or other instrument. *Ibid.*, § 2935.

Assignment of debt secured by mortgage carries with it the mortgage. *Ibid.*, § 2936.

For provisions as to the discharge of mortgages, see *ibid.*, §§ 2938-2941.

COLORADO.

No chattel mortgage shall be valid against any third person unless it be acknowledged and recorded or unless the property included in it be delivered to the mortgagee and remain in his possession. To entitle such mortgage to record its execution must be acknowledged or proved in the manner provided for mortgages of real property. General Statutes of 1908, §§ 512, 513.

Chattel mortgage upon household goods used by family, made by husband or wife residing with the other, not valid unless made by both jointly. *Ibid.*, § 514.

Chattel mortgage, if acknowledged, shall be recorded by recorder of county where property or greater part is situated and, if bona fide, be valid from time of record till maturity of last instalment of debt, but not exceeding two years, if principal is not over \$2500, nor five years, if principal over \$2500 and not over \$20,000, and not over ten years, if principal over \$20,000, notwithstanding property be left in mortgagor's possession, in case the mortgage provides for the property to remain with him, but if the mortgage is to secure a greater sum than twenty-five hundred dollars (\$2500), there shall be recorded annually in the county where the mortgage is recorded, a sworn statement of mortgagee or of one of several mortgagees, showing, first, that mortgage is in good faith to secure sum mentioned, second, that sum is unpaid or how much is unpaid. Mortgage of live stock may cover increase or part thereafter born, as provided therein. Any valid chattel mortgage recorded or filed with county clerk securing debt not over \$300 payable in one installment and due not more than eighteen months after execution of mortgage, may be extended for not more than six months beyond the maturity of the debt, by a sworn statement filed with the county clerk by the mortgagee or his assignee, showing, first, the amount unpaid and, second, that it is due mortgagee or assignee, and he consents to extend mortgage for some period not exceeding six months. *Ibid.*, § 515.

Any mortgage executed and delivered, where debt does not exceed \$300 and time within which it is made to mature does not exceed six months, need not be recorded but may be filed with county clerk and recorder and shall then be held to be of record, and, when released or discharged, the same shall

be made to appear on margin. Certified copy of such mortgage acknowledged and filed as aforesaid, may be used on foreclosure like the original, and certified copy of mortgage acknowledged and recorded or filed may be read in evidence, if affidavit or sworn statement of credible witness shows the original is lost or the person wishing to use it cannot produce it. *Ibid.*, § 516.

Mortgagee, his agent or attorney, is allowed thirty days after maturity of debt, to take possession, and meanwhile the mortgage is valid, the same as if possession had been taken on maturity, and during the thirty days or until possession is taken, the mortgagor may pay the debt and thereupon the mortgage shall be discharged. *Ibid.*, § 518.

Chattel mortgage is good between the parties till debt is paid or outlawed. *Ibid.*, § 519.

Chattel mortgage to secure debt, which has been admitted to record, may, within thirty days after maturity of last installment, be extended for unpaid portion of debt, by mortgagee or assignee filing with county clerk where recorded or filed, a sworn statement showing, first, the total payments made and amount unpaid, second, that it is due mortgagee or assignee and he consents to extend mortgage for some period not exceeding two years. Thereupon the mortgage shall be extended for that period, and, at its expiration, may be again extended for another period not exceeding two years, with like effect, upon filing required statement aforesaid, and such extensions may be had until debt is paid or barred by the statute of limitations. *Ibid.*, § 520.

The above provisions extend to such bills of sale, deeds of trust, and other conveyances of personal property as have the effect of a mortgage or lien upon such property. *Ibid.*, § 521.

A person buying or otherwise obtaining interest in mortgaged personal property, when mortgage is not recorded but he has actual notice of it, buys or obtains such interest subject to the mortgage. *Ibid.*, § 522.

Mortgagor selling the mortgaged personal property to third person for valuable consideration, without informing him of mortgage, shall forfeit to purchaser twice the value of the property so sold. *Ibid.*, § 523.

If mortgagor of personal property during existence of mortgage sells, transfers or encumbers the property or any part, he is deemed guilty of larceny thereof, unless at the time he acquaints the person to whom the sale, transfer or encumbrance is made, with the fact of the mortgage and apprises the mortgagee of the intended sale, giving him the name and residence of party to whom the transfer or encumbrance is to be made. *Ibid.*, § 524.

It is larceny for the mortgagor of chattels or other person to transfer, conceal, take, drive, carry away, or otherwise dispose of any of the property during the existence of the mortgage, contrary to its provisions, without the mortgagee's written consent. *Ibid.*, § 525.

When mortgagee shall have received payment and shall have entered or may enter satisfaction or a receipt for same on mortgage or on record, such satisfaction or receipt shall release the mortgage to the person entitled to a release and reconvey the title of any property in the mortgage to the person entitled to receive the same. *Ibid.*, § 6888.

522. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____, county of _____, in the state of Colorado, part of the first part, for and in consideration of the indebtedness hereinafter mentioned, and in the further consideration of five dollars, in hand paid to the said part of the first part by _____, of the _____, county of _____, and state of Colorado, aforesaid, part of the second part, receipt whereof is hereby acknowledged, the said part of the first part do hereby transfer, assign and sell unto the said part of the second part, _____ heirs and assigns, the following personal property, goods and chattels, to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, and every part thereof, unto the said part of the second part, heirs and assigns forever. And the said part of the first part, for sel , heirs, executors and administrators, do hereby covenant and with the said part of the second part, heirs, executors, administrators and assigns, that at the date hereof the said part of the first part lawfully possessed of the said property, goods and chattels and every part thereof, as own property; that the same and every part thereof are free and clear from any encumbrance, and that will WARRANT AND DEFEND the same to the said part of the second part, heirs, executors, administrators and assigns against any lawful claim or demand whatsoever.

BUT THE CONDITION of this said assignment, transfer and sale of the said property, goods and chattels is such, that whereas, the said part of the first part justly indebted to the said part of the second part, in the principal sum of dollars, evidenced by promissory note , of even date herewith, payable to the part of the second part, or order, [*describe or copy same*] after the date thereof, and bearing interest from , at the rate of per cent. per until paid; said interest to be paid ; AND WHEREAS, the said part of the first part ha covenanted and agreed, and do hereby covenant and agree for sel , heirs, executors and administrators, to and with the said part of the second part, heirs, executors, administrators and assigns, that will well and truly pay, or cause to be paid, the said promissory note when the same shall become due and payable, without days of grace, and will also pay the interest thereon when so due and payable as aforesaid; also, that in case of default in the payment of said note , or any part thereof, or any portion of the interest thereon as aforesaid, then at the option of the said part of the second part, heirs, executors, administrators or assigns, at any time while said default continues, the whole of the said indebtedness shall at once become due and payable, and be promptly paid, anything in said note to the contrary notwithstanding; also, that until said indebtedness, and every part thereof, and all interest as aforesaid, shall be fully paid, the said part of the first part, heirs, executors or administrators will not sell or dispose of, or attempt to sell or dispose of, the said property, goods or chattels, or any part thereof, and without the written consent of the said part of the second part, heirs, executors, administrators or assigns, will not remove, or suffer to be removed, the aforesaid property, goods and chattels, or any part thereof, from the premises where the same are now situate, or from any place to which by such consent the same may hereafter be taken; and also, that until the aforesaid indebtedness shall be fully paid, the said part of the first part, heirs, executors or administrators, shall keep the said property, goods and chattels, insured against loss by fire, to the extent and for the sum of dollars, in some one or more good, safe and reliable fire insurance company or companies, such as shall be satisfactory to the said part of the second part, heirs, executors, administrators or assigns, the policy or policies of insurance to be assigned to, and the loss, if any, payable to the said part of the second part, heirs, executors, administrators or assigns, as interest may appear.

NOW, THEREFORE, if the said part of the first part shall well and truly and promptly pay the aforesaid note, when the same shall become due, without days of grace, and shall also well, truly and promptly pay the interest when the same shall become due and payable as aforesaid, and shall also well and truly abide by, keep and perform each and every of the aforesaid covenants and agreements, then these presents to be null and void — except as hereinafter provided — otherwise to remain in full force and effect.

AND IT IS HEREBY AGREED, that until default shall be made by the said part of the first part, heirs, executors or administrators, in the keeping or performance of some one or more of the conditions, covenants or agreements herein mentioned, the said part of the first part may keep, retain and use the said property, goods and chattels; PROVIDED, HOWEVER, that if default shall be made in the keeping and performance of any one or more of the covenants, conditions or agreements aforesaid, or if at any time before said indebtedness shall be fully paid, the said property, goods and chattels, or any part thereof, shall be claimed, attached or taken, or be about to be claimed, attached or taken, by any third person or persons, or if at any time hereafter, before said indebtedness shall be fully paid, the said part of the second part, heirs, executors, administrators or assigns, shall feel insecure or unsafe in this security, then, and in any such case, the said part of the second part, heirs, executors, administrators or assigns or the agent of them, or either of them, may take immediate and full possession of the aforesaid property, goods and chattels, and any and every part thereof, wherever the same be or may be found, and for that purpose may enter upon or into any premises, building or enclosure, by and with such force and help as may be deemed necessary therefor, and in so doing shall not be liable to any action or complaint therefor, and may thereafter, whether said note shall have become due and payable or not, proceed to sell the said property, goods and chattels, or any part thereof, at public or private sale, at such time or times, on such terms, for such price or prices, in such manner, and to such person or persons as the said part of the second part, heirs, executors, administrators or assigns, or either of them, or the agent of them, or either of them, may see fit, and out of the proceeds of such sale or sales pay: 1st, All costs or expenses in any way, directly or indirectly, growing out of the execution of the provisions hereof, including counsel, attorney's or solicitor's fees and commissions for making sale of said property; 2d, The amount of said note whether then due and payable or not, and all then accrued interest thereon; 3d, To the said part of the first part, heirs, executors or administrators, the remainder of the proceeds of such sale or sales, if any there be, upon reasonable request. But it shall in no case be obligatory upon any person or persons purchasing the said property, goods or chattels, or any part thereof, to see to the regularity of any such sale or sales, or to the application of the purchase money, but such sale or sales shall at all times be fully binding upon the said part of the first part, heirs, executors, administrators and assigns, both in law and equity.

AND IT IS HEREBY FURTHER PROVIDED, that if said property, goods or chattels, or any portion thereof, shall be sold hereunder at public auction, then the said part of the second part, heirs, executors, administrators or

assigns, may become the purchaser or purchasers thereof, the same as any other person or persons; and, further, that the term "assigns," as herein used, shall be taken to include any legal or equitable holder of said note or any of them.

AND IT IS FURTHER AGREED, that if, in pursuance of the terms hereof, the said part of the second part, heirs, executors, administrators or assigns, shall exercise the option of holding the said note due on account of any default herein as aforesaid, it shall not be necessary that such option shall be communicated to the said part of the first part, heirs, executors, administrators or assigns, in order to entitle the said part of the second part, heirs, executors, administrators or assigns, or the agent of them, or either of them, to proceed to take possession of and sell said property, goods and chattels, as above herein provided.

IN WITNESS WHEREOF, the part of the first part ha hereunto set hand and seal , this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

CONNECTICUT.

All contracts for sale of personal property conditioned that title thereto shall remain in vendor after delivery shall be in writing, describing property and all conditions of said sale, and duly acknowledged and recorded within a reasonable time in town clerk's office in the town where vendee resides, but this does not apply to household furniture, musical instruments, bicycles or property exempt from attachment and execution. Otherwise such sales shall be held to be absolute sales, except as between vendor and vendee and the property be liable to be taken by attachment and execution for debts of vendee. Revision of 1902, §§ 4864, 4865.

In any contract for sale of railroad equipment or rolling stock, it shall be lawful to agree that title to property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not pass to vendee until purchase price shall be fully paid, or that vendor shall have and retain a lien thereon for unpaid purchase money.

Any contract for leasing or hiring of such property may stipulate for the conditional sale thereof at the termination of such contract and that rentals or amounts to be received under contract may as paid be applied and treated as purchase money, and that the title to the property shall not vest in lessee or bailee, until purchase price shall have been paid in full and the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; but as to any subsequent attaching creditor or any subsequent bona fide purchaser for value and without notice, the contract must be in writing, duly acknowledged like a deed by the parties and recorded in office of secretary of state, and each locomotive, engine or car must have the name of vendor, lessor or bailor plainly marked on each side thereof, followed by the word "Owner", "Lessor" or "Bailor", as the case may be. Ibid., § 4866.

The following chattel mortgages are good without possession, if executed, acknowledged and recorded as mortgages of lands: Any manufacturing or mechanical establishment, together with the machinery, engines or implements situated and used therein, printing, publishing or engraving establishments, with the machinery, engines, implements, cases, types, cuts or plates situated and used therein. Any dwelling house, with the household furniture belonging to its owner and used therein by him in housekeeping; or any

building containing hay or tobacco in the leaf, together with such hay or tobacco, or any of the personal property above mentioned, without the real estate in which the same is situated or used, any piano, organ or melodeon, or any musical instrument used by an orchestra or band, any brick, burned or unburned, and being in any kiln or brickyard; any furniture, fixtures or other personal chattels owned by hotelkeepers contained and used in the hotel occupied by such hotelkeeper or employed in connection therewith. When such personal property shall be mortgaged with the real estate, mortgage may be foreclosed as if wholly of real estate; otherwise by a complaint claiming the sale of the mortgaged property, and upon said complaint the court may order the same, or so much thereof as may be necessary to satisfy such debt and costs of prosecution, unless such debt and costs shall be paid within such time as it shall limit, to be sold, free of all subsequent encumbrances, by some proper officer in such manner and with such notice as said court shall direct, and, after satisfying debt and costs, to return the excess to the parties entitled thereto, provided that in mortgages made after August 1, 1899, such sum in excess of 10 per cent. per annum, as is paid for interest, shall be applied as payment on account of the principal debt and be deducted therefrom. Plaintiff may have judgment for any unpaid balance. *Ibid.*, § 4132.

No such mortgage shall be invalid as to any item of personal property included therein by reason of its being described as consisting of less than its true number or quantity and if foreclosed the court may make a just order of division in its final decree. *Ibid.*, § 4133.

Every person who shall lend money upon a note secured by mortgage upon personal property, in which the sum of money loaned is stated to be greater than the amount actually loaned, or in which the rate of interest to be charged is greater than the rate allowed by law to be charged by pawnbrokers, shall be fined not exceeding fifty dollars, or imprisonment for not more than three months, or both, and the mortgage and note secured thereby shall be void. *Ibid.*, § 4134.

523. Chattel Mortgage.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME — GREETING:

KNOW YE, that for the consideration of received to full satisfaction of , do hereby bargain, sell, transfer and convey unto the said , the following articles of personal property: [*description*]

TO HAVE AND TO HOLD the same to the said vendee executor , administrator and assigns forever, to and their own proper use and behoof. And the said vendor , do for sel heirs, executors, and administrators, covenant and agree with the said vendee , to warrant and defend said goods to the said vendee against all persons whatever.

THE CONDITION of this deed is such, that whereas the said vendor justly indebted to the said vendee in the sum of dollars, as evidenced by promissory note for value of even date herewith payable to the order of the said vendee with interest.

Now, THEREFORE, if said note shall be well and truly paid, according to tenor, then this deed shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, have hereunto set hand and seal , this day of , A. D. 19 .

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signature.*]

524. Conditional Bill of Sale of Personal Property.

THIS AGREEMENT WITNESSETH that _____ has placed in the possession of _____ the following articles of personal property, viz.: [description] under an agreement that said _____ shall pay to said _____ the sum of _____ dollars as follows: [description of terms of debt] and that when said sum shall have been fully paid then said personal property shall become the property of said _____ and he shall be entitled to a bill of sale of the same on demand, and that until said sum shall have been fully paid as above stated the title to said personal property shall remain in said _____, and that if said _____ shall fail to make any of the payments as above stated, or shall remove any of said property out of the _____, or sell or put the same out of h. possession under an attempt to sell the same, or any of said property shall be permanently removed out of h. possession in any way, then said _____, h. representatives or assigns may, at their election, without notice, take possession of all said personal property with or without legal process and all rights of said _____ in or to the same shall be forfeited and ended, and all payments before that time made shall be considered as compensation for the use of such property and shall be forfeited; and to take such possession said _____, h. representatives or assigns may enter any premises of said _____, using necessary force, and damages for such force and trespass are expressly waived; but the right of resuming possession of such property shall not prevent said _____ from bringing suit instead for, or otherwise collecting, any of said payments as they become due, and no forbearance on the part of said _____ in enforcing h. rights under this agreement shall constitute a waiver or forfeiture of such rights.

Dated at _____ this _____ day of _____, 19 _____.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures of witnesses.]

DELAWARE.

A bona fide mortgage of personal property, duly signed, sealed, delivered and acknowledged like a real estate mortgage, shall for three years be a valid lien, if lodged for record in recorder's office of each county where any of the mortgaged property is held within ten days from the time of the acknowledgment thereof. After default of sixty days in payment of a mortgage or an installment thereof, if it be payable by installment, it may be foreclosed by the same process and means as are used in the case of mortgages of real estate, and judgment may be obtained as well for default of appearance or want of affidavit of defense as upon trial. Proceeds of sale shall be paid to liens upon the property in the order of their priority and any surplus to the mortgagor or his executors, administrators or assigns. It shall be no objection to a mortgage of chattels that the same or any of them are already subject to execution or mortgage lien. No such mortgage shall be valid, unless there be endorsed upon it or annexed to it, and to be recorded with it, an affidavit that said mortgage was made for the bona fide purpose of securing the debt or making indemnity as the case may be, and was not made to cover property of mortgagor or to protect it from his creditors, or to hinder or delay them in the collection of their debts. If any mortgagor shall, without consent of mortgagee, remove mortgaged property

from county where it is situated or in which it was at the time of making mortgage, he shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum equal to value of property removed and be imprisoned for a term not exceeding one year. Revised Code, 1893, p. 633.

DISTRICT OF COLUMBIA.

Every bill of sale, mortgage or deed of trust to secure a debt, of any personal chattels, whereof the vendor, mortgagor or donor shall remain in possession must, except as to the parties and to other persons having actual notice, be executed and acknowledged and, within ten days from date of such acknowledgment, recorded like a deed of real estate; and as to third persons not having notice of it, such instrument shall be operative only from time within said ten days when it is delivered to recorder of deeds to be recorded. Code of Laws, 1905, § 546.

No conditional sale of chattels, where the property is delivered to purchaser, but by terms of which title is not to pass until price of said chattels is fully paid, where the purchase price exceeds one hundred dollars, shall be valid as to innocent third parties, unless the terms of said sale are reduced to writing and signed by parties and acknowledged by purchaser and recorded like a chattel mortgage, and shall be operative as to third parties without actual notice of it from the time of being so recorded. *Ibid.*, § 547.

525. Deed of Trust — Chattels.

THIS INDENTURE, made this day of , A. D. 19 , by and between , of Washington, District of Columbia, part of the first part, and , trustees, of Washington, District of Columbia, parties of the second part:

WHEREAS, [*describe terms of debt*]

AND WHEREAS, said part of the first part desire to secure the full and punctual payment of the said note with interest:

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that said part of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to in hand paid by said part of the second part, the receipt of which is hereby acknowledged, ha granted, sold, and delivered, and do by these presents grant, sell, and deliver unto the said part of the second part, or the survivor of them, all and singular the goods and chattels and personal property named, mentioned, and described in schedule "B," hereto annexed and made part of this deed, the same being now in and upon the premises known as No. , in , District of Columbia.

TO HAVE AND TO HOLD the said goods and chattels and personal property unto and to the use of the said part of the second part, or the survivor of them, executors, administrators, and assigns, in and upon the trust and for the uses following:

IN TRUST, to suffer and permit the said part of the first part to retain possession of and use the said goods and chattels and personal property until the same shall and may be required as hereinafter provided.

AND UPON THIS FURTHER TRUST, upon default being made in the payment of said note , or either of them, or of any interest thereon, when due, or any proper cost, charge or expense in and about the same, then, and at any time thereafter, to take immediate possession of said goods and chattels and personal property, wheresoever the same may be found, and to sell

the same at public auction, upon such terms and after such public notice as the said part of the second part, or the survivor of them, in the execution of this trust, shall deem advantageous and proper; and of the proceeds of sale or sales, First, to pay all proper costs, charges and expenses, including a commission of per cent. on the amount of said sale to said trustee for services; Second, to pay whatever may then remain unpaid of said note, whether the same be due or not; and Last, to pay the surplus, if any, to whomsoever shall be lawfully entitled to the same.

AND UPON THIS FURTHER TRUST, at any time hereafter, whether said note shall be due or not, upon the security hereby given being in anywise endangered in the opinion of said part of the second part, or the survivor of them, by the removal of said goods and chattels and personal property, or any of them, without the written consent of the said part of the second part, or the survivor of them, or by the non-payment of the rent of the premises where said goods and chattels may be placed, stored or deposited, or by the rendering of a judgment or decree for the payment of money against said part of the first part, or if said part of the first part shall not keep the same insured in some good and reliable company against loss by fire to the extent of dollars, and assign the same to the use of said part of the second part, or the survivor of them, for the more effectual securing of the payment of said indebtedness; or if the same shall become endangered in any other manner, in the opinion of the said part of the second part, or the survivor of them, then, and thereafter, upon the written order of the holder or holders of said note or of either of them, to take possession of said goods and chattels and personal property and sell the same, and dispose of the proceeds thereof in the manner hereinbefore provided, as though default had been made in the payment of said note.

IN WITNESS WHEREOF, said part of the first part ha hereunto set hand and affixed seal on the day first hereinbefore written.

[Signatures and seals.]

Schedule "B."

Referred to in the foregoing deed of trust and made a part of the same.

ALL goods, chattels, implements and other personal property of every description now contained in the premises No. , in the , District of Columbia, including [description].

SIGNED, sealed and delivered in the presence of the undersigned as witness , being delivered in the name of all said goods and chattels and personal property .

[Signatures and seals.]

RECEIVED the goods and chattels mentioned in the foregoing deed of trust subject to all its provisions.

[Signature.]

526. Conditional Bill of Sale, with Guaranty.

KNOW ALL MEN BY THESE PRESENTS, that , residing at , have this date obtained from , the following articles: [description] valued at \$, upon which agree to pay the sum of \$ as first payment and a further sum of \$ on the of each until the whole

sum of \$ shall be fully paid; and do hereby agree that the title to the said above described property is to remain vested in said until each and every installment of the said purchase money has been paid in accordance with the stipulations hereinafter and hereinbefore set forth.

IT IS FURTHER AGREED with the said , that will punctually pay each and every installment to them, their personal representatives or assigns, on the several days and times when the same shall become due; that will take good care of the property above mentioned and return the same upon failure to comply with the terms of this agreement in as good condition as a reasonable and proper use and wear of them will permit. will not mortgage, rent, pawn, dispose of or sell the above articles or any part thereof, or in any manner part with the possession of the said property, or remove the same from the , without the permission of the said , first obtained in writing, and will at any time, when so required, exhibit the said property to the said , or their agent, and will give immediate notice of any attempt to levy under any legal proceedings or writ issued against or laid upon such property. And further agree that if default be made in the payment of any of the said sums hereinbefore mentioned as they shall respectively mature; or if shall attempt to sell, pawn or dispose of, misuse or injure any of the said property or any part thereof, or in any manner not comply with this agreement, then it shall be lawful for the said , and hereby authorize and empower them, their heirs, personal representatives, attorneys, or agents to enter upon or into any place where the said property or any part thereof is, or is reasonably believed to be, and to take away and repossess the said property without any opposition or molestation from me, my personal representatives or assigns, or my agents or servants whatsoever. And should discontinue payments after having been duly notified, all sums paid can be considered as having been paid as rental for the use of the aforesaid property.

 have received the said goods and chattels with the further understanding that the said hereby agree if at any time during the period mentioned in this agreement shall desire to have the title to the said property pass and be transferred , they will make and deliver to me a good and sufficient bill of sale therefor upon the payment of all the purchase price hereinbefore mentioned.

 , however, hereby expressly agree, as aforesaid, that no title to the said property, either legal or equitable, shall vest in me except as bailee, unless shall pay the full amount of the purchase price as hereinbefore provided for. And further agree that in the event of suit being instituted by the said , caused by failure to comply with the above-mentioned terms, an attorney's fee of \$10 shall be allowed said . No clause or stipulation of this agreement shall be deemed rescinded as against the said , unless such rescission is in writing and signed by the said .

IN TESTIMONY WHEREOF, hereunto place hand and seal at the city of , this day of , in the year nineteen hundred and .

[Signatures and seals.]

Attest:

[Signature.]

GUARANTY.

IN CONSIDERATION of the sum of one dollar in hand paid do hereby become responsible to , for the true and faithful performance of the within contract of conditional sale, and the payment of all sums of money referred to in said contract in the same manner and to the same extent as if had originally executed the same as vendor. Should there be any default in said contract upon the part of the original vendee therein named, said shall have the right to proceed against immediately without any demand or notice of any kind or character and without first proceeding against said original vendee.

WITNESS hand and seal this day of , A. D. 19 .

[Signature and seals.]

Witness:

[Signature.]

FLORIDA.

All written instruments conveying or selling property to secure payment of money are deemed mortgages. General Statutes of 1906, § 2494.

No chattel mortgage is valid against creditors or subsequent purchasers for valuable consideration without notice, unless recorded or unless property is delivered to mortgagee and remains bona fide in his possession. To entitle it to record, it must be acknowledged like a real property mortgage. *Ibid.*, §§ 2496, 2497.

Any creditor suing to foreclose mortgage on personal property in possession of debtor, may have an attachment against it by filing in the court where the proceedings are being had, an affidavit sworn to by him or his agent, or attorney, that he has reason to believe and does believe the property or part of it will be concealed or disposed of so as not to be forthcoming to answer a judgment, or will be removed beyond jurisdiction of court, or is of perishable character and being used and consumed by the mortgagor or other parties. Such affidavit shall also describe specifically the mortgaged property and state a bill has been filed or other suit brought to foreclose the mortgage, the amount of the debt or demand secured by the mortgage and that the same is actually due. The mortgage or certified copy shall be attached to affidavit. *Ibid.*, §§ 2104, 2105, 2109.

The writ of attachment shall describe the property and command the officer to take and hold it or so much as can be found sufficient to satisfy the debt. *Ibid.*, § 2112.

Property may be restored to any person making affidavit that he is owner of equity of redemption and giving bond with two sureties approved by officer conditioned to pay debt and costs to plaintiff when adjudicated to be so payable. *Ibid.*, § 2117.

In foreclosure, original mortgage or certified copy shall be annexed to and form part of bill of complaint. *Ibid.*, §§ 1868, 2502.

In counties where no county court, justices of peace have jurisdiction in actions to foreclose mortgages on personal property when debt not over \$100. Mortgagee upon commencing suit in a justice's court upon the debt may file therewith the mortgage and upon judgment for the debt the same shall operate as foreclosure and lien shall be enforced by execution as in other cases, except that he shall enforce the judgment against the property mortgaged before resorting to other property of defendant. The defendant may defend upon legal and equitable grounds and third persons interpose claims to the property, as in other suits. *Ibid.*, §§ 2073, 2089.

All mortgages shall be foreclosed in chancery. *Ibid.*, § 2501.

527. Chattel Mortgage, Short Form.

§
ON OR BEFORE the day of , 19 , promise to pay
to or order, dollars, at , with in trest at the rate of
per cent. per annum from date until paid. Value received.

WITNESS:

[Signatures and seals.]

And , maker of the above note, for the purpose of securing the prompt and full payment of the same at maturity, do give unto , heirs and assigns, a mortgage lien upon the following property, now in possession, custody and control, in the county of and state of Florida, to wit: [description]

And the said do hereby warrant and represent that have full right and power to encumber said property as above set forth, and that the same is free and clear of all other mortgages, liens or incumbrances, of any kind or nature whatsoever.

And the said do hereby agree that if said note or any part thereof remains unpaid at maturity to pay all costs, charges and expenses, together with an attorney's fee of per cent. on the amount of the claim that the said , heirs or assigns, may incur or be put to in collecting said money by law or otherwise.

And the said hereby waive the benefit of the homestead and exemption laws of the state of Florida upon the above described property.

IN WITNESS WHEREOF, have hereunto set hand and seal
this day of , A. D. 19 .

[Signatures and seals.]

528. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that , of the of , in the county of and state of , hereinafter called mortgagor, for securing the payment of the money hereinafter mentioned, and in consideration of the sum of dollars, duly paid by , of the of , county of and state of , hereinafter called mortgagee, at or before the en sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said mortgagee, executors, administrators and assigns, all the goods, chattels and personal property now in , and particularly described as follows: [description].

TO HAVE AND TO HOLD all and singular the said goods, chattels and personal property above bargained and sold, or intended so to be, unto the said mortgagee, executors, administrators and assigns forever.

And the said mortgagor, for heirs, executors and administrators, covenant with the said mortgagee, executors, administrators and assigns, that the lawful owner of all and singular the goods, chattels and personal property above bargained and sold; that said property

is free from all incumbrances; that good right to sell the same as aforesaid; and that shall and will warrant and defend the same unto the said mortgagee, executors, administrators and assigns, against the lawful claims of all and every person or persons whomsoever.

PROVIDED ALWAYS, and these presents are upon the express condition, that if the said mortgagor shall well and truly pay unto the said mortgagee, executors, administrators and assigns, the aggregate sum of dollars, secured by certain promissory note of which the following, in words and figures, is a true and correct copy: and also all expenses that may or shall accrue in the event of the foreclosure of this mortgage, reasonable attorney's fees and costs of court included; then these presents shall be void; otherwise to remain in full force and virtue.

And , the said mortgagor, for and heirs, executors and administrators do covenant and agree to and with the said mortgagee, executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, or any installment thereof, or in the payment of the whole or any part of the interest thereon at the times and in the manner provided in said promissory note; or in case the said party of the first part shall remove the said goods, chattels and personal property or any of them without written permission of said mortgagee; or permit or suffer any attachment or other process to be levied upon said property or any part thereof; or permit or suffer any judgment to be entered up against ; then the said aggregate sum of money herein mentioned shall become instantly due and payable, at the option of the said mortgagee, and then it shall and may be lawful for this mortgage to be immediately foreclosed for the whole of said money, interest, costs, fees, charges and expenses as aforesaid.

IN WITNESS WHEREOF the said mortgagor ha hereunto set hand and seal the day of in the year of our Lord one thousand nine hundred and .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures of witnesses.]

529. Note Contract for Personal Property.

To :

Please deliver at as soon as convenient, the following: [*description*] of the value of dollars, which agree to pay for as follows: Cash \$ and Notes, to wit: One of \$ and of \$ each, all of even date herewith, and maturing monthly.

All verbal agreements are merged in this contract. In case of deferred payments, same to bear interest and notes are to be executed in your favor. The possession of above described goods and chattels by the vendee is not to be considered evidence of ownership, but it is expressly agreed that the title to all said property is to remain in you until full amount of purchase price is paid. In case of default in any one of such deferred payments above specified, or in case of removal of said goods or any part thereof without your written consent, or in the event I or we shall mortgage or part with

the possession voluntarily or involuntarily without your written consent of said property or any part thereof, you shall have the right to immediately resume possession of said property wherever it may be found and remove the same with or without process of law, and you may declare the agreement terminated and may retain all moneys paid hereunder as liquidated damages and rental for said goods. In case of legal proceedings to recover possession of said property, agree to pay an attorney's fee of twenty-five dollars.

[Signatures of witnesses.]

[SEAL.]

[Address.]

| | |
|---|---|
| <p style="text-align: right;">Note No.</p> <p style="text-align: center;">19</p> <p>On the . day of , A. D. 19 , without grace, promise to pay to the order of Dollars, at , part purchase money on this day bought by from . This Note to draw per cent. in- terest after maturity. Value received.</p> <p style="text-align: right;">[Signature.]</p> | <p style="text-align: right;">Note No.</p> <p style="text-align: center;">19</p> <p>On the . day of , A. D. 19 , without grace, promise to pay to the order of Dollars, at , part purchase money on this day bought by from . This Note to draw per cent. in- terest after maturity. Value received.</p> <p style="text-align: right;">[Signature.]</p> |
|---|---|

530. Purchase Money Note and Mortgage.

§ . , 19 .
On or before the day of , 19 , promise to pay ,
or order, dollars, at , at , for value received, with inter-
est at % from date until paid, together with reasonable attorney's
fee, and all expenses incurred in any manner incident to collection of same,
whether by suit or otherwise, including recording fees.

This note is given for the purchase price [description] the title to which
property shall remain in said payee until this note with all amounts
now owe or may hereafter owe, are fully paid, and said payee may either
in person or by agent at any time after default in payment hereof, or any
installment hereof, with or without legal process, retake said property,
wherever found, and sell same at public or private sale, as payee may deem
best, and the proceeds of sale shall be credited hereon, and if after crediting
same hereon, there should still be any balance due on this obligation, then
the payee may foreclose this obligation upon the property hereinafter de-
scribed for the collection of such balance.

It is understood that if fail to pay any installment when due, then
each and every installment shall become immediately due and payable; or
if mistreat the above described property, or fail to take the proper
care of same, or if the security embraced herein should depreciate in value
from any cause, and should fail or refuse to furnish additional
security when so required by payee, or if sell or otherwise dispose
of, or attempt to sell or dispose of, or remove from the county in which now

located, the above property, or any part thereof, or property mortgaged below, or any part thereof, or if there should be a breach of any condition of this contract, this note and mortgage shall become immediately due and payable, and subject to foreclosure, and if from any cause this obligation shall become due and payable before or at actual maturity hereof, and same is placed into the hands of an attorney for collection, then the attorney's fee provided for shall become due and collectible also.

To better secure the above note, as well as any other amounts I, we, or either of us, now owe or may owe to said payee, hereby grant, bargain, sell and convey unto said payee, heirs and assigns, the following property, to wit: All of my or our live stock and all other personal property, including all round and square timber, household and kitchen furniture of every kind and character, entire crops of every kind and description including turpentine raised in the years 19 , 19 , 19 , 19 , by or under direction in county, Florida, or elsewhere; all rents and advances coming to me, us, or either of us as landlord; all salary or wages due now or that may become due before the full settlement of this note and mortgage; also [description]. All of the above property is warranted free from any incumbrance and against any adverse claims, and it is upon such representation that the conditional sale of the above mentioned property is made to , and if such representations should be found hereafter to be untrue, then the payee may declare this note and mortgage, and each installment thereof, immediately due and payable, and subject to immediate foreclosure to collect same, and the payee may retake the property conveyed as hereinbefore provided.

We hereby severally waive presentment, protest, or notice of protest, and sureties and indorsers consent that time of payment may be extended without notice thereof.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if pay, or cause to be paid, the above note at maturity according to their legal tenor and effect, together with all costs, interest and charges, and attorney's fee, if any, together with all other amounts, I, we, or either of us may owe the payee, if any, then this obligation to be null and void, else to remain in full force and effect.

Signed, sealed and delivered this the day of , 19 .

[Signatures and seals.]

Executed in presence of us:

[Signatures of witnesses.]

531. Conditional Bill of Sale.

KNOW ALL MEN BY THESE PRESENTS, That , of the county of , and state of Florida, of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to in hand this day paid by of the county of and state of , of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, transferred and delivered unto the said party of the second part, executors, administrators and assigns forever, the following goods and chattels to wit: [description]

TO HAVE AND TO HOLD, the same unto the said part of the second part, executors, administrators and assigns forever.

And do, for and heirs, executors, administrators and assigns, covenant to and with the said part of the second part, executors, administrators and assigns, that the lawful owner of the said goods and chattels; that they are free from all incumbrances; that have good right and lawful authority to sell the same as aforesaid, and that will warrant and defend the sale of the said property, goods and chattels hereby made, unto the said part of the second part, executors, administrators and assigns, against the lawful claims and demands of all persons whomsoever.

This bill of sale is, however, made upon this express condition and with this proviso, to wit: If the said part of the first part, heirs, executors, administrators or assigns, shall on or before the day of , A. D. 19 , pay to the said part of the second part, heirs, executors or assigns, the sum of dollars, interest, as evidenced by a certain promissory note for said sum, of even date herewith, made by the part of the first part to the part of the second part, according to the true intent and meaning thereof, then and in that event this bill of sale shall be null and void; otherwise to be in full force and effect.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of us

[Signatures of witnesses.]

532. Crop Lien, Short Form.

§ 19 .
 For value received, on the day of , 19 , promise to pay to the order of at the sum of dollars, together with interest thereon from at the rate of per cent. per annum. And in order to secure the payment of this obligation hereby give to the said a lien for said amount upon all of the crop of raised by between the date and maturity of this note upon the following described land, to wit: [description] in the county of , Florida.

WITNESS hand and seal the day and year above written.

[Signatures and seals.]

Witnesses: .

[Signatures.]

533. Crop Lien.

STATE OF FLORIDA, }
 County. }

THIS INDENTURE, made this day of , A. D. 19 , between of the county and state aforesaid, of the first part, and of the county of , state of , of the second part,

WITNESSETH, that said part of the first part, for and in consideration of the sum of one dollar to in hand paid by the part of the second part,

at or before the delivery of these presents, the receipt whereof is hereby acknowledged, and, also, for the better securing the payment of certain promissory note bearing even date herewith, for the sum of dollars, bearing interest at the rate of per cent. per annum from payable to or order, on the day of , A. D. 19 , and signed by , a copy of which said note is hereto appended and made a part of this mortgage; as well, also, as to secure the payment of any and all further advances, either in money or supplies, made by the part of the second part during the year following the date of this instrument, in excess of the amount of the above described note, ha granted, bargained, sold and conveyed, and by this indenture do grant, bargain, sell and convey unto the said part of the second part, heirs and assigns, the following described property, to wit: All the crop of grown or cultivated by or for the part of the first part upon piece, parcel or tract of land, situate, lying and being in county, Florida, known and described as follows: [description]

TO HAVE AND TO HOLD, all and singular, the said crops, goods, chattels and personal property above bargained and sold, or intended so to be, unto the said mortgagee, executors, administrators and assigns forever.

And the said mortgagor, for heirs, executors and administrators, covenant with the said mortgagee, executors, administrators and assigns, that said property is free from all encumbrances; that good right to sell the same as aforesaid; and that shall and will warrant and defend the same unto the said mortgagee, executors, administrators and assigns, against the lawful claim of all and every person or persons whomsoever.

It being expressly understood and agreed by and between the parties hereto that any and all advances, either in money or supplies, made as aforesaid, shall be a lien upon the crops aforesaid and herein mortgaged in the same manner and to the same extent as the lien herein given for the security of the aforesaid promissory note above described.

PROVIDED ALWAYS and these presents are upon the express condition that if the said mortgagor shall well and truly pay unto the said mortgagee, executors, administrators and assigns, the aggregate sum of dollars, secured by said certain promissory note, together with any and all advances, in addition to said note, made in accordance with the provisions hereof, of which the following, in words and figures, is a true and correct copy:

COPY OF NOTE.

\$. , 19 .
 after date promise to pay to or order, at , the sum of dollars, value received, with interest at the rate of per cent. per annum from ; together with an attorney's fee of ten per cent. on the amount recovered in case of foreclosure or otherwise if the claim is put into the hands of an attorney for collection.

[Signatures.]

Witness:

[Signature.]

And also all expenses that may or shall accrue in the event of the foreclosure of this mortgage, an attorney's fee of ten per cent. in case an attorney is employed for collection, and costs of court included, then these presents shall be void, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the said mortgagor ha hereunto set hand and seal the day of , in the year of our Lord one thousand nine hundred and .

Signed, sealed and delivered in presence of

[Signatures.]

GEORGIA.

A mortgage on personalty must be recorded in county where mortgagor resided at time of its execution, if a resident of the State. If a nonresident, then in county where mortgaged property is. If on personalty not within limits of this state and such property is afterwards brought within the state, mortgage shall be recorded as above within six months after such property is so brought in.

All chattel mortgages of stocks of goods, wares and merchandise or other personal property, shall be recorded; in case the same is upon property or goods located in some other county than that of the mortgagor's residence, in the county where said goods or personal property is located at time of execution of mortgage in addition to record in the county of mortgagor's residence. Where mortgage is not recorded as now provided by law, but said mortgage is renewed or re-executed, it shall act as a lien upon the property of mortgagor, only as against the mortgagor himself and those having actual notice of such mortgage, except from date of record. Code of 1895, § 2726.

Chattel mortgage may embrace all property in possession or to which the mortgagor has the right of possession at the time, or may cover a stock of goods or other things in bulk but changing in specifics, in which case the lien is lost on all articles disposed of by mortgagor up to time of foreclosure and attaches to purchases made to supply their places. A mortgage given by a person or corporation to a trustee or trustees to secure an issue of bonds shall, when expressly so stipulated, embrace and cover after acquired property. Supplement to Code, § 6174, (a).

No particular form is necessary to constitute a mortgage. It must clearly indicate the creation of a lien, specify the debt to secure which it is given and the property upon which it is to take effect. It must be executed in the presence of and attested by or proved before a notary public or justice of any court in this state or a clerk of the Superior Court and recorded. Code of 1895, § 2724.

Mortgages on personal property shall be foreclosed by the mortgagee, or his agent or attorney in fact, or at law, going before some officer of the state authorized to administer oaths or a commissioner for this state residing in some other state and making affidavit of the amount of principal and interest due on such mortgage, which affidavit shall be annexed to such mortgage or to a copy thereof, verified as correct by the affidavit thereon of the owner or his agent or attorney and when such mortgage or sworn copy with such affidavit annexed thereto shall be filed in office of clerk of Superior Court of the county wherein mortgagor resides at date of foreclosure if a resident of the state, or where he resided at date of mortgage, if a nonresident, it shall be duty of such a clerk to issue an execution, directed to all and singular the sheriffs or their lawful deputies and coroners of this state, commanding the sale of the mortgaged property to satisfy the principal and interest, together with the costs of the proceedings to foreclose said mortgage. Supplement to Code of 1901, § 6175.

Wherever process of attachment can be legally sued out against any person, upon any debt or judgment secured by chattel mortgage or whenever the

purchaser of mortgaged property is seeking to remove same beyond the limits of county the creditor may foreclose his mortgage as above, except that he need not state that the debt or demand is due, but shall state facts as above and the amount of the debt or demand claimed and when the same will become due. Code of 1895, § 2754.

After a levy of execution on the mortgaged property, the defendant may file his affidavit of illegality, in which he may avail himself of any defense that he could have set up in ordinary suit upon the demand secured by the mortgage and show that he is not justly indebted to the plaintiff in the sum claimed in said affidavit of foreclosure. Code of 1895, § 2756.

Officer to whom execution delivered must levy on mortgaged property and advertise it in one or more public gazettes of state weekly for four weeks before day of sale and expose the property to sale at the time and place and in same manner as govern at sheriffs' sales. *Ibid.*, § 2757.

Mortgagee in mortgage on personal property to secure not over \$100 principal or his agent or attorney may make affidavit of principal and interest due and annex it to mortgage and when mortgage or verified copy with the affidavit annexed is filed with justice of peace in county where mortgagor resides, if resident of state, or, if nonresident, then in county where mortgaged property may be, such magistrate must issue execution to the constables of state, commanding sale of property to satisfy principal and interest and costs of foreclosure. Constable to whom such execution is delivered must levy on the mortgaged property wherever found and after advertising it by written advertisements, giving full description of property and the process under which he is proceeding, at three or more public places in district where property found, for ten days next preceding sale, he shall expose it to sale. If the sale is within the legal hours of sale on regular court day and at usual place of holding justice courts for said district, he shall expose it to sale at the time and place, and in the same manner, as govern at constables' sales. Mortgagor may avail himself of any defense to such foreclosure in same manner and on same conditions as on foreclosure in superior courts, and when the defense is filed, the magistrate issuing the execution has jurisdiction to hear and determine the issues. It shall be the duty of the justice of the peace or notary public *ex officio* such a justice, with whom affidavit and mortgage are filed, to give notice to mortgagor of proceedings at time of issuing execution. Code of 1895, §§ 2760-2763.

Due record of mortgage, though not in time prescribed, is notice from time of record to all the world. Code of 1895, § 2730.

The creditor may avail himself of the mortgage, though note or other evidence of debt is barred. *Ibid.*, § 2735.

Mortgagor having paid off mortgage may present it with order of mortgagee or transferee, directing cancellation and recording of order on record, to clerk of superior court of county or counties where mortgage recorded, and such clerk shall write across the record the word "satisfied" and the date of entry and sign name officially. *Ibid.*, § 2737.

If mortgage is to secure several debts due at different times, mortgagee may foreclose when first becomes due, and court will control surplus so as to protect lien for debts not due. *Ibid.*, § 2739.

So, if several mortgages of equal date or in same mortgage and one forecloses, court will control proceeds to distribute to mortgagees according to their claims. *Ibid.*, § 2740.

Property mortgaged may be sold under other process, subject to lien of mortgage. If mortgage foreclosed, mortgagee may place his execution in hands of officer of law making sale and cause the title unencumbered to be sold and claim proceeds according to date of his lien. *Ibid.*, § 2741.

Purchasers at public sales of property subject to lien of mortgage, shall give bond in double the value to officer making sale, conditioned not to remove property out of state and for its forthcoming to answer to lien, provided mortgagee or his agent files with the officer before sale an affidavit of amount due and that he apprehends loss of property unless bond be taken. On failure to give bond, property shall be resold at risk of purchaser. *Ibid.*, § 2742.

When execution issues upon foreclosure of personal property mortgage, mortgagor or his special agent may file affidavit of illegality to such execution, setting up any defense he might set up, according to law, in ordinary suit on demand secured by mortgage which goes to show amount claimed is not due. *Ibid.*, § 2755.

When such affidavit of illegality is filed and the mortgagor or his special agent or attorney gives bond to plaintiff, with good security, in sum not larger than twice the amount of the execution or, when the property levied on is of less value than the execution, double the value of property levied on, at reasonable valuation to be judged by levying officer, conditioned for return of property when called for by the officer, the officer shall postpone sale and return papers to court from which execution issued, where issue shall be tried as other cases of illegality, and jury shall be sworn to give at least 25% damages to plaintiff on principal sum, if it appear affidavit made for delay only. When mortgagor unable from poverty to give bond and makes affidavit of the fact, stating also therein that he has been advised and believes his grounds of illegality will be sustained, the affidavit shall be accepted in lieu of the bond but the property shall remain in hands of officer, unless sold under special order of court, as in cases of perishable property, or because expensive to keep or liable to deteriorate. *Ibid.*, § 2766.

If mortgagor fails to set up and sustain defense, the property shall be sold and proceeds applied to judgment of said mortgage execution, unless claimed by another lien in hands of officer, entitled in law to priority of payment; and if, after satisfaction of such *fi. fa.* or other lien, there is surplus, same shall be paid to mortgagor or his agent. *Ibid.*, § 2767.

If creditor of mortgagor, whether his debt be in judgment or not, desires to contest validity or fairness of mortgage lien or debt, he may make affidavit of the grounds relied on to defeat the mortgage, and on filing it with the levying officer, with bond and good security, payable to mortgagee, conditioned to pay costs and damages incurred by delay, if issue be found against contestant, the officer must return the same to the court to which the mortgage *fi. fa.* is made returnable, to be tried in manner prescribed for affidavit of illegality by mortgagor. *Ibid.*, § 2769.

Holder of mortgage of personal property may foreclose it in equity according to practice of courts in equitable proceedings as well as by methods prescribed in Code. *Ibid.*, § 2770.

When personal property is sold and delivered with the condition that the title is to remain in vendor until purchase price paid, every such conditional sale, in order to make the reservation of title valid against third parties must be evidenced in writing, executed and attested like mortgages on personal property. As between the parties the contract is valid and enforceable, whether evidenced in writing or not. *Ibid.*, § 2776.

Conditional bills of sale must be recorded within thirty days from their date and in other respects are governed by laws relating to registration of mortgages. *Ibid.*, § 2777.

Where contract to purchase personal property has been made or purchase money partly paid, and purchase money or secured debt has been reduced to judgment by payee, assignee or holder of debt, the holder of legal title or his executor or administrator shall, without order of court, execute to said defendant in *fi. fa.* or his executor or administrator a quitclaim to such personal property and file and have it recorded in the clerk's office, and thereupon it may be levied upon and sold as other property of defendant, and proceeds applied to payment of judgment or, if there be conflicting claims, applied as determined in proceedings for that purpose. *Ibid.*, § 5432.

HAWAII.

All chattel mortgages must be recorded in the office of the registrar of conveyances, in default of which no such instrument shall be binding to the detriment of third parties, nor conclusive upon their rights and interest.

Foreclosure may be by sale under a power of sale or by suit before a judge without the intervention of a jury. Revised Laws of 1905, §§ 2381 and 2169, and § 2161, as amended in 1907.

IDAHO.

Chattel mortgage must be accompanied by the affidavit of the mortgagor that it is made in good faith and without any design to hinder, delay or defraud creditors and be acknowledged or proven as grants of real estate and the mortgage or a true copy thereof be filed for record with the county recorder of the county where such property is located and kept. Otherwise, it is void against creditors and subsequent purchasers and incumbrancers in good faith and for value. Revised Code 1908, § 3408.

Where mortgaged personal property is thereafter removed from the county wherein it was situated at the time of the execution of mortgage, by the written consent of mortgagee, the mortgagee within ten days after such removal must cause mortgage to be recorded in county to which property has been removed or within ten days after such removal take possession of mortgaged property. *Ibid.*, § 3410.

Any mortgage of personal property where the debt is due may be foreclosed by notice and sale or by action in a district court having jurisdiction in county in which property is situated. *Ibid.*, § 3412.

The mortgagee is allowed one day for every twenty miles or fraction thereof of the distance between his residence and the county recorder's office where such mortgage is to be recorded before any subsequent incumbrance, sale or seizure under any process is effectual to hold or bind the mortgaged property. *Ibid.*, § 2420.

534. Chattel Mortgage.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and .

BETWEEN , residing at , county of , state of Idaho, and by profession, trade or occupation , the part of the first part, and residing at , county of , state of Idaho, and by profession, trade or occupation , the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said part of the second part all of those certain goods and chattels now being in , state of Idaho, and described as follows: [*description*]

TO HAVE AND TO HOLD, all and singular, the said goods and chattels above bargained and sold or intended so to be, unto the said part of the second part, executors, administrators and assigns, forever. Provided, nevertheless, and these presents are upon the express condition, that if the said part of the first part, executors, administrators or assigns, shall well and truly pay unto the said part of the second part, executors, administrators or assigns, the sum of dollars according to the conditions of certain promissory note of which the following true cop [*here insert copies of notes*] as by the said promissory note , reference being thereunto had, may fully appear, then these presents shall be void. But in case default be made in the payment of said principal sum of money, or any part thereof, or interest, or any installment thereof, as provided in said note , then and from thenceforth it shall be optional with the said part

of the second part, executors, administrators or assigns, to consider the whole of said principal and interest expressed in said note as immediately due and payable, although the time expressed in said note for the payment thereof shall not have arrived; and immediately thereupon and without notice of such election to consider the whole sum to be due, it shall be lawful for, and the said part of the first part do hereby authorize and empower the said part of the second part, executors, administrators or assigns, with the aid and assistance of any person or persons, to enter the premises or such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels and sell and dispose of the same for the best price they can obtain by due process of law or by arrangement of the said parties to this mortgage, their executors, administrators or assigns, and out of the money arising therefrom to retain and pay the sum above mentioned, and interest as aforesaid, and all costs and charges touching the same, together with counsel fees in such sum as the court may adjudge reasonable, if this mortgage be foreclosed by decree of court, or if it be foreclosed by notice and sale, then counsel fees in the sum of dollars, which sum is hereby liquidated by the parties hereunto as reasonable and proper counsel fees for such foreclosure, rendering the overplus, if any, unto the said part of the first part, or to executors, administrators or assigns. And until default be made in the payment of the said sum of money, the said part of the first part, executors, administrators and assigns, may remain and continue in the quiet and peaceable possession of said goods and chattels, and in full and free use and enjoyment of the same.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

STATE OF IDAHO, }
 County of , } ss.

, the mortgagor in the foregoing mortgage named, depose and say that the foregoing mortgage is made in good faith and without any design to hinder, delay or defraud creditor or creditors.

[Signature.]

Subscribed and sworn to before me,

this day of , 19 .

[Signature.]

535. Crop Mortgage.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between of , county of , state of Idaho, part of the first part, and of , county of , state of , part of the second part,

WITNESSETH, the said part of the first part, for and in consideration of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, assigned, transferred, set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said part of the second part, and to heirs and assigns forever, the following crop, namely, the crop of [*state whether now growing or hereafter to be planted*] upon that certain piece and parcel of land lying and being in the said county of , state of Idaho, described as follows, to wit: [*description*]

TO HAVE AND TO HOLD, the above mentioned and described crop subject to the provisions hereinafter contained: Provided, nevertheless, that these presents are made upon the expressed conditions that if the said part of the first part, executors, administrators or assigns shall well and truly pay unto the said part of the second part, executors, administrators of assigns, dollars, in accordance with the conditions of promissory note , of which the following true cop , to wit: [*here copy notes*] as by said promissory note , reference being thereunto had, will more fully appear, then these presents shall be void.

And the said part of the first part do hereby covenant and agree to and with the said part of the second part, heirs and assigns, that will well and truly, properly and in due season [*if crop is not yet planted insert provisions as to planting, etc.*] and in a good farmer-like manner, tend, care for, irrigate and protect the same and the said crop while growing and until fit for harvest and then faithfully and without delay harvest, thresh, clean and sack and deliver the same immediately into the possession of the said part of the second part or assigns, to be by held and disposed of according to law and the proceeds applied in the payment of the debt hereby secured, together with all costs, expenses and disbursements in connection therewith; and in default of any of the above acts to be done by the said part of the first part, the said part of the second part or assigns may enter into the premises and take all necessary or proper measures for the planting, raising and protection of said crop and may retain possession thereof and harvest, thresh or sack the same, and all expenses so incurred and all that may become necessary in taking care of said crop, as well as in the hauling, storage and delivery thereof, shall be secured by this mortgage, and shall be first payable in lawful money of the United States out of money realized by the sale of said crop; that the part of the second part and heirs or assigns may at all times enter into the premises to view the same or to take any measures necessary or proper for the protection of said crop or interest therein; that upon harvesting the same the part of the second part and heirs and assigns shall be entitled to the immediate possession of the same and to haul and store the same at the expense of the part of the first part, and for the purposes aforesaid, the part of the first part make , constitute and appoint the part of the second part and assigns, true and lawful attorney with full power to enter upon said premises, take possession of said crop and care for, thresh, clean and sack the same and do any and all other things deem neces-

sary for protection; and in case of any default on the part of the said part of the first part, or if said second part shall at any time deem insecure may thereupon declare said note to be immediately due and payable and enforce this mortgage.

And the part of the first part, heirs and assigns do further authorize the part of the second part, heirs or assigns to take possession of said crop and harvest it, to haul and store the same and sell and dispose of the same according to law, and with the proceeds thereof to pay the costs and expenses of such proceeding, including dollars, attorney's fees and the costs, charges and expenses incurred in the care of such crop and the harvesting, hauling and storage thereof and the sum due upon said note, rendering the overplus, if any, to said part of the first part.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

STATE OF IDAHO, }
 County of , } ss.

, the mortgagor in the foregoing mortgage, depose and say that the foregoing mortgage is made in good faith and without any design to hinder, delay or defraud creditors.

[Signature and seal.]

Subscribed and sworn to before me,
 this day of , 19 .

[Signature.]

536. Discharge, Satisfaction and Release of Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that do hereby certify and declare that a certain chattel mortgage, bearing date the day of , A. D. 19 , made and executed by , the part of the first part therein, to , the part of the second part therein, filed for record and indexed in book of minutes of mortgages of personal property, on page in the office of the county recorder of the county of , state of Idaho, on the day of , A. D. 19 , together with the debt thereby secured, is fully paid, released, satisfied and discharged.

IN WITNESS WHEREOF, have hereunto set hand and seal, the day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

ILLINOIS.

Chattel mortgages must be acknowledged before a justice of peace or county judge of county where the mortgagor resides, or before clerk or any deputy clerk of any municipal court in such county, or if the mortgagor is not a resident of state before any officer authorized by law to take acknowledgments of deeds, but in counties having a population of more than 200,000,

the mortgagor, if a resident may acknowledge before a justice of peace of town or precinct where he resides, or if there be none such, before clerk or any deputy clerk of municipal court in the district in which he resides, or if there be none such before county judge of county in which he resides. The certificate of acknowledgment may be in the following form: "This (name of instrument) was acknowledged before me by (name of grantor) (when the acknowledgment is made of a resident insert the words 'and entered by me') this day of 19 .

Witness my hand and seal.

(Seal.)

(Name of Officer.)"

Revised Statutes of 1908, p. 1451, § 2.

If the acknowledgment is by a resident, the justice of peace, clerk or deputy clerk of municipal court or county judge shall enter on his docket or in some book kept for that purpose a memorandum thereof, substantially as follows:

"A. B. (name of mortgagor) to C. D. (name of mortgagee); mortgage of (here insert description of the property as in the mortgage). Acknowledged this day of 19 ." Ibid., § 3.

Such mortgage so acknowledged must be recorded in the county in which the mortgagor shall reside at the time, or if not a resident of the state in the county where the property is situated, and shall be valid until the maturity of the entire debt or obligation or extension thereof not exceeding three years from the filing of the mortgage, unless within thirty days next preceding the expiration of such three years, or if the debt or obligation matures within such three years, then within thirty days next preceding such maturity, the mortgagor and mortgagee, his or their agent or attorney shall file for record in office where original mortgage is recorded and also with justice of peace or his successor, upon whose docket the same was entered, an affidavit setting forth particularly the interest which mortgagee has by virtue of such mortgage in property therein mentioned, and if such mortgage is for the payment of money, the amount remaining unpaid thereon and the time when the same will become due by extension or otherwise. Such affidavit to be recorded by such recorder and to be entered upon the docket of such justice of peace, and thereupon the mortgage lien originally acquired will be continued and extended for one year from filing of such affidavit or until the maturity of indebtedness secured by such mortgage or extension thereof not exceeding one year from the date of filing such affidavit. Ibid., § 4.

All notes secured by chattel mortgages shall state upon their face that they are so secured and when assigned by the payee therein named shall be subject to all defenses existing between the payee and payor of said notes, the same as if said notes were held by the payee therein named, and any chattel mortgage securing notes which do not state upon their face the fact of such security shall be absolutely void. Ibid., p. 1455, § 25.

No chattel mortgage on the necessary household goods, wearing apparel or mechanic's tools of any person or family shall be foreclosed except in a court of record, nor shall such household goods, wearing apparel or tools be seized or taken out of the possession of the mortgagor before foreclosure, except by a sheriff, and then only after the mortgagee or his agent shall present an affidavit to a judge of any court of record, setting forth that the mortgage is due or that he is in danger of losing his security, giving the facts upon which he relies, and shall obtain an order for such seizure, but this does not apply to sale of furniture by regular dealers on the so-called installment plan. Ibid., p. 1455, § 23.

No chattel mortgage executed by a married man or married woman on household goods shall be valid, unless joined in by the husband or wife as the case may be. Ibid., § 24.

All sales under a power of sale shall be made in the county where the mortgagor resides or where the property is situated when mortgaged. If there are more than one mortgagor, then in the county where the mortgagor in possession of property resides at time of taking possession by mortgagee, and in

every case where the mortgagor can be found or his or her post office address can be obtained, notice of the time and place of such sale shall be given to one or more of the mortgagors three days prior to such sale, and by posting a copy of said notice at the place where said goods secured by said mortgage are located at least three days prior to said sale, and upon the making of said sale, mortgagee shall make out a statement showing the items of personal property sold, the names of each purchaser, amount for which each article sold, and also an itemized statement of the necessary reasonable expenses incurred in taking, keeping and selling said property, and shall deliver the same to the mortgagor or some one of them in person or by mail, and if he fails to do so within ten days after said sale, the owner of said property may sue for and recover one-third of the value of the property so sold from the mortgagee or person making said sale as assignee of said mortgagee, but this does not apply to the sale of furniture by regular dealers on the so-called installment plan. Ibid., § 26.

537. Chattel Mortgage.

THIS INDENTURE, made this day of in the year of our Lord, one thousand nine hundred , between of the in the county of and state of , party of the first part, and of the in the county of and state of , party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of dollars, in hand paid, the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm unto the said party of the second part, heirs and assigns, all and singular the following described goods and chattels, to wit: [*description*] together with all and singular the appurtenances thereunto belonging, or in any wise appertaining: To have and to hold the same unto the said , heirs, executors, administrators and assigns, to and their sole use forever. And the said for and heirs, executors, and administrators, do covenant and agree with the said , heirs, executors, administrators and assigns, that lawfully possessed of the said goods and chattels, as of own property; that the same are free from all incumbrances; that will, and heirs, executors and administrators, shall warrant and defend the same unto the said party of the second part, heirs, executors, administrators and assigns, against the lawful claims and demands of all persons, and that will keep the said goods and chattels insured against loss by fire for the full insurable value thereof, in such companies as the holder of the note hereinafter mentioned may direct, and make the loss, if any, payable to, and deposit the policies with, the holder of said note , as further security for the indebtedness hereinafter mentioned.

PROVIDED, NEVERTHELESS, that if the said , heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said , heirs, executors, administrators or assigns, [*describe terms of debt*] then and from thenceforth these presents, and everything therein contained, shall cease, and be null and void.

AND PROVIDED, ALSO, that it shall be lawful for the said party of the first part, executors, administrators and assigns, to retain possession of the said goods and chattels, and at own expense to keep and use the

same until or executors, administrators or assigns, shall make default in the payment of said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated.

AND THE SAID PARTY OF THE FIRST PART hereby covenant and agree that in case default shall be made in the payment of any or either of the notes aforesaid, or of any part thereof, or the interest thereon, or any part thereof, on the day or days respectively on which the same, or any part thereof, shall become due and payable; or if the party of the second part, executors, administrators or assigns, shall feel insecure or unsafe, or shall fear diminution, removal or waste for want of proper care of said property; or if the party of the first part shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any part thereof, or any interest therein, or if any writ issued from any court, or by any justice of the peace, or any distress warrant shall be levied on said goods and chattels, or any part thereof, or if the party of the first part shall fail or neglect to keep the property insured for the further security of the party of the second part, and to deposit the policies, as aforesaid; then, and in any or either of the aforesaid cases, all of said note and sum of money, both principal and interest, shall, at the option of the party of the second part, executors, administrators or assigns, without notice of said option to any one, become at once due and payable, anything in said note or in this mortgage to the contrary notwithstanding; and the party of the second part, executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate and exclusive possession of said property, and every part thereof, and for that purpose may pursue the same or any part thereof, wherever it may be found, and also may enter any of the premises of the said party of the first part, with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove and sell, and dispose of, said property, or any part thereof, at public auction, to the highest bidder, after giving ten days' notice of the time, place, and terms of sale, together with a description of the property to be sold, either by publication in some newspaper in the or by similar notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash, or on credit, as the said , heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect, at any which sale at auction the said mortgagee, heirs, executors, administrators or assigns, agent or attorneys, or either of them, may become the purchasers, and out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such property, goods, chattels, and effects, and all prior liens thereon, together with the amount due and unpaid upon said or any of them, either in principal or interest, rendering the overplus of money arising from such sale (if any there shall be) unto or legal representatives, which sale or sales so made shall be a perpetual bar, both in law and equity, against the party of the first part, legal representative and assigns.

WITNESS the hand and seal of the party of the first part, the day and year first above written.

[Signature and seal.]

Signed, sealed and delivered, in the presence of
[Signatures of witnesses.]

STATE OF ILLINOIS, }
County of Cook, } ss.

I, _____, clerk of the Municipal Court of Chicago, in the _____ district, do hereby certify that this mortgage was duly acknowledged before me by _____, the mortgagor therein named, and entered by me this day of _____, A. D. 19 _____.

WITNESS my hand and seal,

[SEAL.]

_____ Clerk of the Municipal Court of Chicago,
in the _____ District.

STATE OF _____, }
County of _____, } ss.

_____, of said _____ county, being duly sworn, deposes and says: That the lawful owner of the goods and chattels described in the within chattel mortgage to which this is attached and made a part thereof; and that said goods and chattels are free and clear of all liens or incumbrances, except the said mortgage to which this paper is attached. And that there are no judgments or executions against the said _____ that affect the title of said goods and chattels named in said mortgage

By and under the foregoing representation _____ have obtained a loan of (\$ _____) dollars, of which said chattel mortgage is given to secure the payment and interest.

[Signature and seal.]

Subscribed and sworn to before me,
this _____ day of _____ 19 _____.

[Signature.]

538. Chattel Mortgage — Corporation to Individual.

KNOW ALL MEN BY THESE PRESENTS, that _____, a corporation created and existing by virtue of the laws of the state of _____ and doing business in the state of _____, in consideration of the sum of _____ dollars, to it paid by _____ of the county of _____ and state of _____, the receipt whereof is hereby acknowledged, doth hereby grant, sell, convey and confirm, unto the said _____ and to _____ heirs and assigns, the following goods and chattels, to wit: [description]

TO HAVE AND TO HOLD all and singular the said goods and chattels, unto the said mortgagee herein, and _____ heirs, executors, administrators and assigns to _____ and their sole use forever. And the mortgagor herein for itself, its successors, and assigns does hereby covenant to and with the said mortgagee, _____ heirs, executors, administrators and assigns, that said

mortgagor is lawfully possessed of the said goods and chattels, as of its own property; that the same are free from all incumbrances, and that it will, and its successors shall, warrant and defend the same to _____, the said mortgagee, _____ heirs, executors, administrators and assigns, against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, that if the said mortgagor, its successors or assigns, shall well and truly pay unto the said mortgagee, _____ executors, administrators, or assigns _____, [description of debt] then this mortgage is to be void, otherwise to remain in full force and effect.

AND PROVIDED ALSO, that it shall be lawful for the said mortgagor, its successors and assigns, to retain possession of the said goods and chattels, and at its own expense to keep and use the same until it or its successors or assigns shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor hereby covenants and agrees that in case default shall be made in the payment of the note aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable; or if the mortgagee, _____ executors, administrators or assigns, shall feel insecure or unsafe, or shall fear diminution, removal, or waste of said property; or if the mortgagor shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein, or if any writ, or any distress warrant, shall be levied on said goods and chattels, or any part thereof; then, and in any or either of the aforesaid cases, all of said note and sum of money, both principal and interest, shall, at the option of the said mortgagee, _____ executors, administrators or assigns, without notice of said option to anyone, become at once due and payable, and the said mortgagee, _____ executors, administrators or assigns, or any of them; shall thereupon have the right to take immediate possession of said property, and for that purpose, may pursue the same wherever it may be found, and may enter any of the premises of the mortgagor with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove, and sell, and dispose of the said property, or any part thereof, at public auction, to the highest bidder, after giving _____ days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee, _____ heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect; and, out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note, rendering the surplus, if any remain, unto said mortgagor, or its legal representatives.

IN TESTIMONY WHEREOF, the said mortgagor hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its _____ presi-

dent, and attested by its secretary, this day of in the year
of our Lord 19 .

By *President.*

Attest:

Secretary.

Signed, sealed and delivered in presence of

[*Signatures of witnesses.*]

539. Chattel Mortgage for Chattels and House on Leased Land, with Homestead Waiver.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred , between of the in the county of and state of , party of the first part, and of the in the county of and state of , party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of dollars, in hand paid, the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm unto the said party of the second part, heirs and assigns, all and singular the following described goods and chattels, to wit: [*description*]

TOGETHER with all and singular the appurtenances thereunto belonging, or in any wise appertaining: To have and to hold the same unto the said heirs, executors, administrators and assigns, to and their sole use forever. And the said for and heirs, executors and administrators, do covenant and agree with the said , heirs, executors, administrators and assigns, that lawfully possessed of the said goods and chattels, as of own property; that the same are free from all encumbrances; that will, and heirs, executors and administrators, shall warrant and defend the same unto the said party of the second part, heirs, executors, administrators and assigns, against the lawful claims and demands of all persons, and that will keep the said goods and chattels insured against loss by fire for the full insurable value thereof, in such companies as the holder of the note hereinafter mentioned may direct, and make the loss, if any, payable to, and deposit the policies with, the holder of said note as further security for the indebtedness hereinafter mentioned.

PROVIDED, NEVERTHELESS, that if the said , heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said , heirs, executors, administrators or assigns, [*describe terms of payment*] then and from thenceforth these presents and everything therein contained shall cease, and be null and void.

AND PROVIDED, ALSO, that it shall be lawful for the said party of the first part, executors, administrators and assigns, to retain possession of the said goods and chattels, and at own expense to keep and use the same until or executors, administrators or assigns, shall make default in the payment of said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated.

AND THE SAID PARTY OF THE FIRST PART hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption, under or by virtue of any and all statutes of the state of _____, providing for the exemption of homesteads from sale on execution or otherwise.

AND THE SAID PARTY OF THE FIRST PART hereby covenant and agree that in case default shall be made in the payment of any or either of the notes aforesaid, or of any part thereof, or the interest thereon, or any part thereof, on the day or days respectively on which the same, or any part thereof, shall become due and payable; or if the party of the second part, executors, administrators or assigns, shall feel _____ insecure or unsafe, or shall fear diminution, removal or waste for want of proper care of said property; or if the party of the first part shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any part thereof, or any interest therein, or if any writ issued from any court, or by any justice of the peace, or any distress warrant shall be levied on said goods and chattels, or any part thereof; or if the party of the first part shall fail or neglect to keep the property insured for the further security of the party of the second part, and to deposit the policies, as aforesaid; then, and in any or either of the aforesaid cases, all of said note and sum of money, both principal and interest, shall, at the option of the party of the second part, _____ executors, administrators or assigns, without notice of said option to any one become at once due and payable, anything in said note or in this mortgage to the contrary notwithstanding; and the party of the second part, _____ executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate and exclusive possession of said property, and every part thereof, and for that purpose may pursue the same or any part thereof, wherever it may be found, and also may enter any of the premises of the said party of the first part, with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove and sell, and dispose of, said property, or any part thereof, at public auction, to the highest bidder, after giving ten days' notice of the time, place and terms of sale together with a description of the property to be sold, either by publication in some newspaper in the _____ or by similar notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash, or on credit, as the said heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect, at any which sale at auction the said mortgagee heirs, executors, administrators or assigns, agent or attorneys, or either of them, may become the purchasers, and out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such property, goods, chattels and effects, and all prior liens thereon, together with the amount due and unpaid upon said _____, or any of them, either in principal or interest, rendering the overplus of money arising from such sale [if any there shall be] unto _____ or _____ legal representatives, which sale or sales so made shall be a perpetual bar, both in law and equity, against the party of the first part, _____ legal representatives and assigns.

WITNESS the hand and seal of the party of the first part, the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered, in the presence of

[Signatures.]

INDIANA.

No chattel mortgage is valid against third parties, where goods not delivered to mortgagee and retained, unless acknowledged like deed and recorded in recorder's office of county where mortgagor resides, if he resides in state, and, if not, then in county where property situated, within ten days after execution. Revision of 1908, § 7472.

No mortgage of household goods shall authorize mortgagee to sell such property, and any provision therein giving him the power of sale is void. Every sale of such goods to satisfy mortgage thereon shall be under a judicial proceeding in which it shall be foreclosed in the circuit or superior court. Mortgagee of such goods is not entitled to possession unless mortgage provides he shall have possession from execution of mortgage until sale and he takes actual possession when mortgage executed and holds continuously until sale. *Ibid.*, §§ 8636, 8637.

Holder of mortgage on household goods or agent whose duty it is to receive money thereon, when any payment thereon is received by them from mortgagor or from any person acting for him, must execute receipt to him, dated and signed by mortgagee or his agent, which shall state date and amount of loan, amount of money actually paid to mortgagor on it, amount charged by mortgagee or agent for services and expenses in connection with loan, rate of interest, amount of payment received and how applied, and amount unpaid and when it will be due. If such receipt is not so executed and delivered, the mortgage is void. *Ibid.*, § 8638.

Mortgagor of personal property in possession who, without written consent of owner of claim secured by mortgage, removes any of it out of county where it was at time of mortgaging or secretes or converts any of it to his own use or sells any of it to anyone without informing him of mortgage shall be fined not exceeding \$300 and may also be imprisoned not exceeding six months. *Ibid.*, § 2299.

In written contract for sale of electrical equipment for street railroad engaged in business of supplying electricity or steam for light, heat and power, by which the purchase-money or part of it is to be paid in future, it may be agreed that title to the property sold or contracted to be sold, shall not pass until purchase-money fully paid or that vendor shall have lien for unpaid purchase-money, notwithstanding delivery to and possession by vendee. In written contract for leasing or renting such equipment, it may be stipulated that there be a conditional sale at the termination of the lease and that the rental as paid be treated as purchase-money, and that title shall not vest until purchase-money is paid in full, notwithstanding delivery to and possession by such lessee or vendee. Every such contract here specified shall be valid against purchasers and creditors, if acknowledged by vendee or lessee before officer authorized to take acknowledgments of deeds, and recorded within thirty days after such execution in miscellaneous records in office of recorder of county where railroad located and operated. *Ibid.*, §§ 5700-5702.

In written contract for sale of railroad equipment or rolling stock, deliverable immediately or subsequently at stipulated periods, by which purchase-money or part of it is to be paid in future, it may be agreed that title to the property sold or contracted to be sold, shall not pass to vendee until purchase-money fully paid, or that vendor shall have lien for unpaid purchase-money, notwithstanding delivery to and possession by vendee, but the terms of credit for payment of the purchase-money shall not exceed

ten years from execution of contract. In written contract for leasing or renting railroad equipment or rolling stock, it may be stipulated that there be a conditional sale at termination of lease and that rental as paid be treated as purchase-money and that title shall not vest until purchase-money paid in full, notwithstanding delivery to and possession by lessee or vendee, but the time for payment of purchase-money shall not exceed ten years from execution of contract. Every such contract here specified shall be valid against purchasers and creditors, if acknowledged by vendees or lessees before officer authorized to take acknowledgments of deeds and recorded within sixty days after execution in office of secretary of state in Indianapolis, Indiana, and, when so recorded, shall be valid as to all property covered by it, but each locomotive engine or car so sold or contracted to be sold or leased, must have the name of the vendor or lessor or assignee plainly placed or marked on each side or be otherwise marked so as to indicate ownership, and when vendor is citizen of Indiana, then the vendor shall record also in county where he lives. *Ibid.*, §§ 5525-5528.

Acknowledgments of such contracts may be in form required as to conveyances of real estate. *Ibid.*, § 5530.

See provisions as to the release and satisfaction of mortgages. *Ibid.*, §§ 1138, 1140-1142.

Mortgage of record or any part of it may be assigned by mortgage or any assignee thereof either by an assignment entered on margin of record, signed by him and attested by recorder, or by separate instrument executed and acknowledged and recorded on such margin, or in mortgage records, in which case the assignment shall be noted in such margin by recorder by reference to book and page where recorded. *Ibid.*, § 1145.

In suit to foreclose mortgage, it shall be sufficient to make mortgagee or assignee shown by record to hold interest therein defendants. All persons failing to cause assignments to them to be made or recorded, unless they cause themselves to be made parties pending the action, are bound by the decree as if parties. *Ibid.*, § 1150.

540. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____ of _____ county, in the state of _____, mortgage to _____ of _____ county, in the state of _____, the following described personal property, to wit: [description] to secure the payment of _____ promissory note, dated _____, 19 _____, given by _____ to _____, payable _____, all without relief from valuation or appraisalment laws.

Now if the said _____ shall well and truly pay said note at maturity, with all interest due thereon, then this instrument shall be void, otherwise to remain in force.

IT IS AGREED AND UNDERSTOOD by the parties hereto, that said _____ shall retain possession of and have the use of said property until said note hereby secured become due, and if said note not paid promptly at maturity, said _____ shall then have the right to take and keep possession of said property wherever it may be found, without any process of law, and the same shall become the absolute property of the said _____, and the said _____ hereby expressly agrees not to remove the said property from the place where it now is without the consent of said _____, nor to sell, assign or lease the same without such consent; to use such property well, keep the same insured in some reliable company, and in good repair; and in case of default being made in any one of these conditions, or if the property shall be levied on by execution from any court, or shall come into the hands of any adminis-

trator, guardian, executor, assignee, trustee or commissioner, to be sold, then and in either of such cases the mortgagee or his attorney or agent, or his heirs, executors, administrators or assigns, shall have the right to take immediate and unconditional possession of the same wherever the same can be found, and sell the same at public or private sale, without any proceedings or decree of foreclosure first had and obtained, to the highest bidder for cash in hand or on reasonable credit, as may deem best, after giving days' notice of the time, place and terms of sale, with a description of the property to be sold, by at least advertisements, in print or writing, posted in public places in the vicinity where the sale is to take place.

WITNESS, hand and seal, this day of , 19 .

[Signatures and seals.]

541. Chattel Mortgage — Merchandise.

KNOW ALL MEN BY THESE PRESENTS, that , of county, in the state of Indiana, in consideration of the sum of dollars, to in hand paid, the receipt whereof is hereby acknowledged, ha bargained and sold, and do hereby bargain and sell unto , of county, in the state of , the following described personal property situate in county, in the state of Indiana, to wit: [description]

Provided always, and these presents are upon the condition, that whereas, the said , indebted to , in the sum of dollars, evidenced by promissory note of even date herewith, executed by , and payable to , as follows:

Now, therefore, if the said shall well and truly pay said promissory note the same become due, together with all interest thereon, and shall well and truly perform all of the conditions herein, then this instrument shall be void, otherwise to remain in full force. It is agreed by the parties hereto, that the said mortgagor shall retain possession of said property, and may sell thereof at retail in the ordinary course of business, for cash, and for full value; provided all proceeds of sales so made, less the necessary expenses thereof, shall be applied to the payment of the indebtedness hereby secured; and said mortgagor agree that he will not sell or assign said property except as herein provided, and will not remove the same from the place where it now is without the written consent of the mortgagee, and the said mortgagor expressly agree to properly care for said property, and keep the same insured in one or more reliable insurance companies in a sum not less than dollars, for the benefit of the mortgagee, and that all insurance on said property, whether payable to said mortgagee or not, shall inure to the benefit of the mortgagee as if so made payable. It is also agreed that the said mortgagee, personally or by agents or attorneys, shall at all times hereafter have access to said property, with the right to examine the same and ascertain its condition.

It is further expressly agreed, that upon failure to pay any one of said notes at maturity, then all of said notes shall be and forthwith become due and collectible without notice; and that until default shall be made in some one of the conditions or stipulations herein expressed, the said mortgagor shall have the right to the possession of the mortgaged property,

but upon failure to pay any one of said notes at maturity, or the violation of any of the conditions or stipulations herein contained; or if the property, or any part thereof, shall be levied on by execution, decree or other process from any court, or shall come into the hands of any executor, administrator, guardian, trustee, assignee, commissioner, or other person, to be sold or for any other purpose; or if said property is being wasted, or the security injuriously affected, then, or in any of such cases, said notes shall forthwith become due and collectible, and the mortgagee shall have the right to take immediate possession of said property, and to foreclose this mortgage, or sell the property at public or private sale, without process of law, as said mortgagee shall elect. Such sale, without legal process, shall be at such time, place, and in such manner as in the judgment of said mortgagee will be most advantageous, and if sold at public sale, upon like notice as provided for sales of personal property on execution in the state of Indiana, the proceeds arising from such sale, after paying the costs, charges and expenses thereof, shall be applied, as far as the same shall extend, to the payment of the indebtedness hereby secured, and if such proceeds shall be more than sufficient for that purpose, the surplus shall be paid to the mortgagor.

IN WITNESS WHEREOF, the said ha hereunto set hand and seal, this day of , 19 .

[Signatures and seals.]

IOWA.

No sale, contract or lease making a transfer of title of personal property depend upon any condition is valid against any creditor or purchaser of vendee or lessee in possession in pursuance thereof, without notice, unless acknowledged and recorded the same as chattel mortgages. Code of 1897, § 2905.

No sale or mortgage of personal property, where vendor or mortgagor retains possession, is valid against creditors or subsequent purchasers, without notice, unless written instrument conveying it is acknowledged like conveyances of real estate and recorded with recorder of county where holder resides. No incumbrance of personal property which is held exempt from execution by head of family, if resident of state, shall be valid as to such exempt property, unless the same be by written instrument, concurred in and signed by husband and wife jointly, if both living. But incumbrances on the property sold, given to secure purchase price, need only be signed and acknowledged by purchaser. *Ibid.*, § 2906.

Mortgaged personal property may be levied on under attachment or execution against mortgagor, if within ten days after levy, officer or creditor pay amount of mortgage and interest to holder of mortgage or deposit the same for his use with clerk of district court of county from which issued or secure the same. *Ibid.*, §§ 3905, 3979.

The person entitled to receive payment of mortgage debt shall deliver to attaching or execution creditor, on written demand, a written statement under oath, showing nature and amount of original debt, date and amount of each payment made thereon, and detailed statement of amount due and unpaid. *Ibid.*, § 3987.

If right of mortgagee to receive such or any sum is questioned by levying creditor, he may, within ten days after levy or after demand for a statement of amount due as above provided, commence an action in equity or contest such right upon filing bond in penalty double the amount of mortgage, or double the value of property levied on, conditioned for payment of any sum to be found due to person entitled thereto, or for value of property levied on, with sureties to be approved by clerk; and if mortgagee non-

resident or residence unknown, service may be by publication as in other actions, but, if residence becomes known before final submission, court may order personal service. If commenced at law, court may transfer to equity side as in other cases. Court may appoint receiver and shall determine amount due on mortgage, value of property levied on and all other questions properly presented, and continue or dismiss lien of levy. If two or more mortgages, creditor may admit validity of one or more, and make deposit as to such, and contest the other, and where two or more mortgages, each questioned, a failure to establish invalidity of all shall not defeat levying creditor's rights, but in such case the decree shall determine priority of liens and direct order of payment out of proceeds of the property, which shall be sold under special execution to be awarded in said cause. *Ibid.*, § 3988, as amended in 1898, in Supplement of 1907, p. 954.

Failure to make the statement, when required as above provided, shall postpone lien of mortgage and give levy of attachment or execution priority over claim of holder thereof. Code of 1897, § 3989.

See provisions as to satisfaction. *Ibid.*, § 4295.

Chattel mortgage to secure payment of money only, where time of payment is therein fixed, may be foreclosed by notice and sale, unless stipulation to contrary agreed on by parties, or by action in the proper court. *Ibid.*, § 4273.

Notice must contain full description of property, with time, place and terms of sale, and be served on mortgagor and subsequent purchasers and persons having recorded liens junior to mortgage or they will not be bound by proceedings. The service and return must be made as in case of the original notice by which civil actions are commenced in courts of record, except that no publication in newspapers is necessary, the general publication directed in section 4277 being sufficient service on all parties where service is to be by publication. *Ibid.*, §§ 4274-4276.

After notice served on parties, it must be published in same manner and for same length of time as required in cases of sale of like property on execution, and sale shall be conducted in same manner. *Ibid.*, § 4277.

If notes secured by mortgage or mortgage itself provide for payment of attorney's fees, same fees shall be collected as are provided by law in actions on such contracts, if attorney employed to look after and direct proceedings, who shall make affidavit like that required in actions and have it attached by officer or person making sale to his return. *Ibid.*, § 4279.

Officer or person conducting sale shall execute bill of sale to purchaser. *Ibid.*, § 4280.

Evidence of service and publication of notice and of sale, together with any postponement or other matters, shall be perpetuated by affidavits attached to bill of sale and constitute the return and be evidence to prove the facts they state. *Ibid.*, § 4281.

Sale made as above are valid as to purchaser, whatever the equities between mortgagor and mortgagee. *Ibid.*, § 4282.

Right of mortgagee to foreclose, as well as amount claimed to be due, may be contested by anyone interested in so doing, and proceedings may be transferred to district court, for which purpose an injunction may issue. *Ibid.*, § 4283.

Deeds of trust of personal property may be executed as securities for performance of contracts, and shall be considered as, and foreclosed like, mortgages. *Ibid.*, § 4284.

If mortgagor of personal property, while mortgage unsatisfied, wilfully destroy, conceal, sell, or dispose of it, without written consent of the then holder of mortgage, he is guilty of larceny. *Ibid.*, § 4852.

In contract for sale of railroad or street railway equipment or rolling stock or power house, electric or other equipment of street or interurban railways or of electric light and power companies or of steam heating companies, such equipment including engines, boilers, generators, switch boards, transformers, motors and other machinery and appliances, it may be agreed

that the title, although possession be delivered immediately or at any subsequent time, shall not vest in purchaser till purchase price be fully paid or that the seller shall have lien for unpaid purchase money. In contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at the termination of contract and the rentals or amounts to be received under the contract may, as paid, be treated as purchase money, and the title shall not vest in lessee or bailee till purchase price paid in full and terms of contract performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract is valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties and acknowledged by vendee or lessee or bailee, in same manner as deeds, and filed for record in office of secretary of state, and unless each locomotive engine, stationary engine, boiler, switch board, transformer, motor, other piece of machinery or appliance or car so sold, leased or hired shall have the name of vendor, lessor or bailor plainly marked on each side, followed by word "owner," "lessor" or "bailor," as the case may be. *Ibid.*, § 2051, as amended in 1907, in Supplement of 1907, p. 455.

The contracts authorized in section 2051 shall be recorded by secretary of state in book of records to be kept for that purpose, and, on payment of purchase price and performance of terms and conditions, a declaration in writing to that effect may be made by vendor, lessor or bailor or assignee, on margin of record of contract, duly attested, or by a separate instrument acknowledged by vendor, lessor or bailor or assignee and recorded as aforesaid. *Ibid.*, § 2052, as amended in 1906, in Supplement of 1907, p. 456.

542. Chattel Mortgage — Attorney's Clause.

KNOW ALL MEN BY THESE PRESENTS, that of the county of and state of , in consideration of the sum of dollars, to me in hand paid by of , party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain, sell, assign and transfer unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels now owned by me and in my possession at , section , township , range , county, Iowa, to wit: [description].

TO HAVE AND TO HOLD the same forever, and I, the said party of the first part, will forever warrant and defend the same against the lawful claims of all persons whomsoever. Upon condition, however, that if the said shall pay or cause to be paid to the said , his heirs, assigns, etc., his promissory note dated and described as follows, to-wit: One for dollars, payable , 19 , one for dollars, payable , 19 , and one for dollars, payable , 19 , with interest at the rate of per cent. per annum, according to the tenor thereof, then these presents to be void, otherwise in full force.

And I, the said , do hereby covenant and agree with the said that in case of default made in the payment of the above mentioned promissory note or in case of my attempting to dispose of or remove from said county of the aforesaid goods and chattels, or any part thereof, or whenever the said mortgagee or assigns shall choose so to do, then and in that case it shall be lawful for the said mortgagee or assigns, by or agent, to take immediate possession of said goods and chattels, wherever found, the possession of these presents being sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient

to pay the amount due or to become due, as the case may be, with all reasonable costs and attorney's fees pertaining to the taking, keeping, advertising and selling of said property.

And _____, the said mortgagor, hereby further covenants and agrees with the said _____ that in the event proceedings are commenced on this mortgage for foreclosure thereof then and in that case I covenant and agree to pay a legal amount as attorney's fees; the property or money remained after paying said sums, if any, to be paid or delivered on demand to the said party of the first part.

Said sale to take place at _____ in the county of _____ and state of Iowa, after giving at least ten days' notice thereof, by posting up written notices in three public places in said county. And I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof which shall be conclusive as to the regularity of all the proceedings connected herewith, and convey absolutely all my right and title therein; and said _____, wife of said _____, hereby concurs in this instrument.

WITNESS _____ hand this _____ day of _____, 19 _____.

[Signatures.]

KANSAS.

Chattel mortgage or conveyance intended as such, not accompanied by immediate delivery and followed by continued change of possession, is void against creditors and subsequent purchasers and mortgagees in good faith, unless mortgage or copy forthwith deposited in office of register of deeds in county where property then situated, or, if mortgagor resident of State, in county where he then resides. General Statutes of 1909, § 5224.

Mortgage so filed shall be void against creditors or subsequent purchasers or mortgagees in good faith, after expiration of two years after filing, unless, within thirty days next preceding expiration of the two years, and each two years thereafter, the mortgagee, his agent or attorney make affidavit exhibiting interest of mortgagee in property at the time last aforesaid, claimed by virtue of such mortgage, and, if it is to secure payment of money, the amount due and unpaid. Such affidavit shall be attached to and filed with the mortgage or copy on file. *Ibid.*, § 5226.

If such affidavit is filed before a purchase of the mortgaged property is made or other mortgage deposited or lien obtained thereon in good faith, it is as valid as if filed within the period above provided. *Ibid.*, § 5227.

Certified copy of the original instrument or copy thereof so filed, including the affidavit, shall be evidence of the receipt and filing of the same according to the indorsement of the register thereon. *Ibid.*, § 5228.

In absence of stipulations to contrary, mortgagee of personal property shall have legal title and right of possession. *Ibid.*, § 5230.

Provision for satisfaction. *Ibid.*, § 5231.

After condition broken, mortgagee or assignee may proceed to sell the property or so much as is necessary to satisfy mortgage and costs of sale, having first given notice of time and place of sale by written or printed handbills posted up in at least four public places in township or city where property is to be sold, at least ten days before sale. *Ibid.*, § 5232.

If mortgagee or assignee shall have obtained possession of the property before or after condition broken, mortgagor or any subsequent mortgagee may demand in writing a sale of such property. In such case, the mortgagee shall proceed to sell the property, having first given the same notice as provided in section 5232. *Ibid.*, § 5233.

If, after satisfying mortgage and costs of sale, surplus remains, it shall be paid to any subsequent mortgagee entitled to it or to mortgagor or his assigns. *Ibid.*, § 5234.

It is unlawful for either husband or wife to create lien by chattel mortgage on personal property owned by either or both and exempt to resident heads of families from seizure and sale upon attachment, execution or other process issued from any court in State, without joint consent of both, and no such chattel mortgage shall be valid unless executed by both, but this does not invalidate any such mortgage except so far as relates to the exempt property covered by it. *Ibid.*, § 5235.

Instruments in writing or promissory notes now in existence or hereafter executed evidencing the conditional sale of personal property and retaining the title in vendor until purchase price paid in full, shall be void against innocent purchasers or the creditors of the vendee, unless the instrument or a copy is deposited in office of register of deeds of county wherein the property shall be kept and entered upon the records the same as a chattel mortgage, and when so deposited shall remain in full force until amount fully paid, without renewal of same by vendor; and any conditional verbal sale of personal property reserving to vendor any title in property sold shall be void against creditors and innocent purchasers for value. When the amount of the note or evidence of indebtedness shall have been fully paid by vendee, vendor shall release the same under the same terms, conditions and penalties as are required by the law relating to chattel mortgages. *Ibid.*, § 5237.

Any mortgagee named in a chattel mortgage, not being then the owner and holder of the debt secured by it, who shall execute a release or satisfaction of the mortgage, with intent to defraud mortgagor or the owner and holder of the debt, shall be guilty of a felony. *Ibid.*, § 5238.

Mortgagor of personal property or any other person who shall injure, destroy or conceal the property or any part thereof, with intent to defraud mortgagee, his executors, administrators, personal representatives, or assigns, or shall sell or dispose of the same without written consent of mortgagee or his executors, administrators, personal representatives, or assigns, shall be guilty of larceny. *Ibid.*, § 5239.

When chattel mortgage or other instrument of writing or indebtedness filed in the office of the register of deeds of any county is satisfied or paid, he must, after making a proper entry of the satisfaction or payment in the record, return the original, or the copy, if such it be, to mortgagor or person executing the same. *Ibid.*, § 5240.

If person executing the same or his assigns cannot be found within two years subsequent to such payment or satisfaction, the register of deeds shall destroy the chattel mortgages or other instruments of writing remaining in his office by burning the same in the presence of the county commissioners, a note or list of the instruments to be destroyed having been entered in the index book for chattel mortgages. All chattel mortgages which have expired by reason of being on file five years, and not renewed, may be destroyed by the register of deeds in the same way. *Ibid.*, §§ 5241, 5242.

543. Chattel Mortgage, Short Form.

THE UNDERSIGNED, of _____ county, Kansas, for the purpose of securing the payment of _____ dollars and interest, according to the conditions of promissory note of even date herewith, one note payable _____, 19____, for \$ _____, and one note payable _____, 19____, for \$ _____, do hereby sell and mortgage unto _____, and _____ assigns, the following described property, now in _____ possession, to wit: [description] owned entirely by _____ without any incumbrance.

PROVIDED, that if the undersigned shall pay the said debt, then this mortgage shall be void. And it is hereby agreed that if default be made in the payment of said debt, or any part thereof, or if any attempt be made to dispose of or remove said property from _____ county, or if at any time the payee of said note shall deem the said debt unsafe or insecure, he hereby authorized to enter upon the premises where the said property may be and remove and sell the same at public auction or private sale, with or without notice, and out of the proceeds retain the amount then owing on said debt, with expenses attending the same, rendering to the undersigned the surplus, after the whole of said debt shall have been paid, with charges aforesaid.

WITNESS, _____ hand and seal, this _____ day of _____, 19 _____.

[Signature.]

STATE OF KANSAS, }
County, } ss.:

_____ being first duly sworn, say that he _____ the lawful owner of the property described and included in the within chattel mortgage. That there are no other chattel mortgages or liens upon said property, and that he _____ duly authorized to make the above conveyance.

[Signature.]

Subscribed and sworn to before me,
this _____ day of _____, 19 _____.

[Signature.]

Commission expires _____, 19 _____.

STATE OF KANSAS, }
County, } ss.:

I DO SOLEMNLY SWEAR, that I am one of the within-named mortgagees, and that the property described in the within mortgage was, on the _____ day of _____, 19 _____, conveyed to _____ to secure the payment of _____ dollars, of which sum there is yet due and unpaid the sum of _____ dollars. So help me God.

[Signature.]

Subscribed and sworn to before me,
this _____ day of _____, 19 _____.

This affidavit, filed this _____ day of _____, 19 _____, at _____ o'clock, _____ m., and entered in Vol. _____, Page _____.

_____, Register of Deeds.

544. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____ part of the first part, is indebted to _____ of the second part, in the sum of _____ dollars, to be paid as follows:

NOW, THEREFORE, IN CONSIDERATION OF SUCH INDEBTEDNESS, and to secure the payment of the same, as aforesaid, said part of the first part do hereby sell, assign, transfer and set over to said part of the second part, the property described in the following schedule, viz.: [description] provided, however, that if said debt and interest be paid, as above specified, this sale and transfer shall be void.

The property sold is to remain in possession of said part of the first part, until default be made in the payment of the debt and interest aforesaid, or some part thereof; but in case of a sale or disposal, or attempt to sell or dispose of the same, or a removal of or attempt to remove the same from or an unreasonable depreciation in the value; or if, from any other cause, the security shall become inadequate, or if at any time the party of the second part shall deem himself insecure, the said part of the second part may take such property, or any part thereof, into own possession. And upon taking said property into possession, either in case of default, or as above provided, said part of the second part shall sell the same at public or private sale with or without notice, and after satisfying the aforesaid debt and interest thereon, and all necessary and reasonable costs, charges and expenses incurred, out of the proceeds of sale, he shall return the surplus to said part of the first part or legal representatives. And if, from any cause, said property shall fail to satisfy said debt, and interest aforesaid, said part of the first part hereby agree to pay the deficiency.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand this day of , A. D. 19 . [Signature.]

Executed in presence of

[Signatures of witnesses.]

NOTE.—The following affidavit must be made within thirty days next preceding the expiration of one year from the filing of this mortgage, and each year thereafter, or after the expiration of one year from such filing, it will be void as against subsequent purchasers, and mortgagees in good faith.

STATE OF KANSAS, }
County, } ss.:

I DO SOLEMNLY SWEAR that I am one of the within named mortgagees, and that the property described in the within mortgage was, on the day of , , conveyed to to secure the payment of dollars, of which sum there is yet due and unpaid the sum of dollars; so help me God.

[Signature.]

Subscribed and sworn to before me,
this day of .

[Signature.]

This affidavit filed this day of , , at o'clock, M.
and entered in Vol. , page .

Register of Deeds.

545. Detachable Note and Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that of the county of and state of Kansas, party of the first part, in consideration of the sum of 100 dollars, to him paid by , party of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained and sold, and by these presents do grant, bargain and sell unto said second party, and h heirs, executors, administrators and assigns, all of the following articles of personal property, owned entirely by without any incumbrance, situated in the county of and state of Kansas, to wit: [description].

PROVIDED ALWAYS, and these presents are upon this express condition, that if said party of the first part shall pay or cause to be paid unto the said party of the second part, or to his heirs, executors, administrators or assigns, the aforesaid sum of _____¹⁰⁰ dollars, according to the terms of a certain promissory note of even date herewith, of which the following is a true copy:

\$ _____ Kansas, _____, 19 _____
 after date _____ promise to pay to the order of _____ dollars,
 at _____, value received, with interest at _____ per cent. per annum after
 until paid.
 Due _____.

[Signatures.]

And which note the said party of the first part hereby agrees to pay, then these presents and everything herein contained shall be void, anything herein contained to the contrary notwithstanding. And it is hereby mutually covenanted and agreed between the parties hereto, that if default be made in payment of said sum of money, or any part thereof, or the interest thereon, according to the tenor and effect of said note, when the same becomes due and payable, or upon a failure to conform to or comply with any of the conditions or agreements herein mentioned, upon the happening of any of the forfeitures herein provided for, then the whole sum of money hereby secured shall, at the option of the legal holder or holders hereof, become due and payable at once without notice. And it is further agreed that in case of a sale or disposal, or attempt to sell or dispose of the goods and chattels hereby mortgaged, or a removal of or attempt to remove the same from the county aforesaid, or an unreasonable depreciation in value, or if from any cause the security shall become inadequate, or the party of the second part shall deem himself insecure, then and thenceforth it shall be lawful for the said party of the second part, his successors, heirs, executors, administrators or assigns, or his authorized agent, to enter upon the premises of the said party of the first part, or any other place or places wherein said goods and chattels aforesaid may be, to remove and dispose of the same, at public auction or private sale, and all the equity of redemption of the said party of the first part, and out of the avails thereof to retain the full amount of said obligation, with interest thereon according to the conditions thereof, together with all reasonable costs and expenses attending the same, rendering to said party of the first part, or his legal representatives, the surplus money (if any there shall be), anything herein to the contrary notwithstanding. And until default be made as aforesaid, or until such time as the said party of the second part shall deem himself insecure as aforesaid, the said party of the first part to continue in the peaceable possession of all the said goods and chattels, all of which, in consideration thereof, he engages shall be kept in as good condition as the same now are, and taken care of at his expense; and if from any cause said property shall fail to satisfy said debt and interest aforesaid, said party of the first part hereby agrees to pay the deficiency.

IN WITNESS WHEREOF, the said party of the first part has hereunto set hand, this _____ day of _____, A. D. 19 _____.
 Executed in the presence of

[Signatures.]

[Signature.]

STATE OF KANSAS, }
 County, } ss.

, being first duly sworn, says that he the lawful owner of property described and included in the within instrument of writing, and that he has full power to sell or mortgage the same and give clear title, and there are no chattel mortgages or liens upon said property.

[Signature.]

Subscribed to in my presence and sworn to before me,
 this day of , 19 .

[Signature.]

Commission expires , 19 .

STATE OF KANSAS, }
 County, } ss.

I DO SOLEMNLY SWEAR, that I am one of the within-named mortgagees, and that the property described in the within mortgage was, on the day of , 19 , conveyed to to secure the payment of dollars, of which sum there is yet due and unpaid the sum of dollars. So help me God.

[Signature.]

Subscribed and sworn to before me,
 this day of , 19 .

[Signature.]

This affidavit filed this day of , 19 , at o'clock, m., and entered in Vol. , Page .

Register of Deeds.

No. Note is secured
 by Chattel Mortgage
 numbered as above.

\$, Kansas, 19 .
 after date promise to pay to the order of
 dollars, at , value received, with interest at per cent.
 per annum after until paid.
 Due

[Signatures.]

Secured by Mortgage No.
 Residence, Section
 Town , Range

County,

[Signatures.]

KENTUCKY.

No mortgage or other instrument constituting a lien or other security for any note or other evidence of indebtedness shall be received for record by any county clerk, unless it give the county and state of the residence and post-office address of person or corporation owning or holding said note or other evidence of indebtedness, or liable for the payment of taxes thereon. Statutes to 1909, § 2042.

All deeds and mortgages and other written instruments required by law to be recorded to be effectual against purchasers without notice or creditors shall be recorded in clerk's office of court of county in which the property conveyed or the greater part of it shall be. *Ibid.*, § 2061.

No deed or deed of trust or mortgage conveying a legal or equitable title to real or personal estate shall be valid against purchaser for valuable consideration without notice or against creditors, until acknowledged or proved according to law, and lodged for record. *Ibid.*, § 2062.

Liens by deed or mortgage may be discharged by entry acknowledging satisfaction on margin of record, signed by person entitled to same or his personal representative and attested by the clerk or his deputy, which, in case of a mortgage or deed of trust, shall have the effect to reinvest the title in the mortgagor or grantor, or person entitled thereto. *Ibid.*, § 2064.

In recording mortgages and deeds in which liens are retained (except railroad mortgages securing bonds payable to bearer), there shall be left a blank space immediately after the record of such deed or mortgage of at least two full lines for each note or obligation named therein. *Ibid.*, § 2065.

When note or notes named in any deed or mortgage shall be assigned to any other person, assignor may, over his own hand, attested by the clerk, note the assignment in said blank space, and when any one or more of notes named in any deed or mortgage is paid, or otherwise released or satisfied, the holder of said note or notes, and who appears from the record to be such holder, may release lien, so far as such note or notes are concerned, by release, over his own hand, attested by clerk. No person, except such as shall, from such record or assignment of record, appear at the time to be the legal holder of the said note or notes, can release the lien securing the same. *Ibid.*, §§ 2066, 2067.

546. Chattel Mortgage.

THIS MORTGAGE, made this, the day of , 19 , by and between , of the first part, and , of the second part,

WITNESSETH, that said first party being indebted to said second party, in the sum of dollars, for the property hereinafter named, and this day sold to said first party by said second party, and which indebtedness said first party has and does hereby agree and promise to pay to said second party, as follows: [*description*]

AND NOW, the said first party, to secure the prompt payment of said indebtedness as aforesaid, with all interest and costs that may accrue thereon, and to secure the faithful and prompt performance of the covenants hereinafter named, has bargained and sold, and does now hereby bargain, sell, grant, and convey unto said second party, his heirs and assigns forever, the following described property, viz.: [*description*]

AND ALSO, in consideration of the premises, and as part of this mortgage, said first party expressly covenants and agrees with said second party, as follows:

First. That said first party, without any notice or demand whatever, will pay each payment of said indebtedness, on the days and at the times hereinbefore named, to the second party, , at .

Second. That said first party will always retain the care and custody of all said property, and not hire or rent out any part of it, or make any other mortgage on said property while any of said indebtedness is unpaid.

Third. That said first party will take good and proper care of all of said property, and that it shall be always kept in , at , and no part of it shall be removed from said house or premises.

Fourth. That should said first party at any time violate, or fail to strictly comply with, either or any of the aforesaid provisions or covenants, then all said payments and indebtedness then unpaid shall immediately become due and payable at once. And said second party may take possession of all said property, and have and own it as his own absolutely, or sell it to pay said indebtedness. And he, said second party, may enter in and on any house or premises occupied by the first party, to take possession of all or any of said property, or said second party may bring any action or suit at law or equity to collect all said indebtedness, or enforce or foreclose this mortgage on all said property at his option.

PROVIDED, NEVERTHELESS, that if said first party shall pay said indebtedness as herein provided, and keep each and all the said provisions and covenants, then this mortgage shall be null and void, but otherwise it shall remain and continue in full force and effect as herein provided.

IN TESTIMONY WHEREOF, witness the hand of said first party, the day and date first herein written.

Witnessed by

[Signature.]

[Signatures.]

STATE OF KENTUCKY, }
County of } *set.:*

I, _____, clerk of the County Court for the county aforesaid, do certify that the foregoing mortgage to _____ was, on the _____ day of _____, 19____, produced to me in my office, and acknowledged and delivered by _____, to be _____ act and deed, and the same was this day lodged to be, and is, with this certificate duly recorded in my office.

WITNESS my hand, this _____ day of _____, 19____.

By _____, *Clerk.*
D. C.

LOUISIANA.

Railroad company established under laws of State may, to secure payment of obligation contracted by it for construction of the road, mortgage their road, in whole and in part; and such mortgage, if made of entire road, shall bear upon the entire road, though not completed at time the mortgage was made; and such mortgage may also be made to bind the appurtenances, warehouses, depots, water stations, locomotives, etc. Such mortgage shall bind the road, its warehouses, depots, water stations, locomotives, and other appurtenances that may be mortgaged in the several parishes where the same may be, only by the record of the mortgage in each parish, and such mortgage need not be reinscribed to continue it in force. Revised Laws to 1903, §§ 2427, 2428.

The recorder of mortgages shall cancel and erase, on the simple application in writing to that effect, by owner, creditor of owner, or other interested party, all inscriptions of mortgages which have existed or may exist on the record for a period exceeding ten years, without a renewal of such inscription, but this shall not apply to some special classes of mortgages designated. *Ibid.*, § 2399.

Any railroad corporation doing business or owning property in State may mortgage its property and franchises, then owned or to be acquired, in whole or in part, to secure bonds issued by it to refund or pay its indebtedness or to improve or develop its properties or for any purpose authorized by its

incorporation, such bonds to be in such amounts, to run for such time, to be payable within or without State, and to bear such interest, not to exceed legal rate at place of payment, as company issuing same shall determine. Any such railroad company may mortgage its property and franchises, then owned or to be acquired, in whole or part, to secure bonds issued by any other railroad corporation of this or any other State or States; such bonds to be issued to refund or secure the means to pay, or the proceeds of which shall be, or have been, used to pay the indebtedness of such mortgage* corporation, or to improve or develop its property, or for any purpose authorized by its incorporation, and may be issued in such amounts, to run for such time, to be payable within or without State, and to bear such interest, not to exceed legal rate at place of payment, as such corporation determines. Act 23, 1898, p. 25, §§ 1 and 2, in Revised Laws to 1903, pp. 1479, 1480.

Any railroad company chartered by this State or any other State and whose road lies in whole or part in this State, which has mortgaged or may hereafter mortgage its franchises, road-bed, superstructure and other property, and said mortgage shall afterwards be foreclosed by any court of this State or United States, having jurisdiction, the purchasers at sale shall have same right to operate said railroads in this State as the incorporated company who had executed said mortgage, and be entitled to and invested with all the rights, franchises, privileges, and immunities appertaining to the property or franchises, or both, so sold, as fully and completely as the company is or was. Act 38, 1877, p. 48, § 1, in Revised Laws to 1903, p. 1481.

In any contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that the title to the property sold or contracted to be sold, although possession is delivered immediately or at subsequent times, shall not vest in purchaser until price paid, or that the seller shall have against all persons a lien thereon for unpaid purchase money. And in contract for leasing or hiring such property, it may be stipulated that there be a conditional sale after termination of contract, and the rentals or amount to be received under contract may, as paid, be treated as purchase money, and the title shall not vest in lessee or bailee until purchase price paid in full and terms of contract fully performed, notwithstanding delivery to and possession by such vendee, lessee or bailee; but no such contract shall be valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties and duly acknowledged by vendee, lessee or bailee, or duly proved, like deeds, and filed for record in office of recorder of parish of East Baton Rouge, in a book called Railroad Conditional Sales Book, if vendee, lessee or bailee is a railroad or railway company whose line is situated in more than one parish, and if situated only in one parish, then in the office of the recorder of the parish where such railroad or railway is situated, in the ordinary mortgage-book, and unless each locomotive-engine or cars so sold, leased or hired, or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by the word owner or lessor or bailor, as the case may be. In case of failure of vendee, lessee or bailee to make the payments or perform the covenants in any such contract, the lessor, vendor or bailor or his or its assignee may retake property in accordance with contract, and then the vendee, lessee or bailee or his or its assignee shall have no right of redemption, and all payments made under the contract shall be forfeited. On payment of purchase money and performance of terms and conditions, a written declaration to that effect may be made by vendor, lessor or bailor or his or its assignee, on margin of record of contract, duly attested, or by separate instrument acknowledged and recorded as aforesaid. Act 111, 1894, p. 149, §§ 1, 3, 4, in Revised Laws to 1903, pp. 1483, 1484.

A corporation formed by the consolidation of two or more street railroad companies shall have power to issue bonds and dispose of same and to secure payment thereof by mortgage of every and all of the property and franchises, rights, privileges and immunities of said consolidated company then acquired

* So in original

or thereafter to be acquired of the companies of which it is formed. Act 100, 1898, p. 125, § 4, in Revised Laws to 1903, pp. 1488, 1489.

Otherwise as above, there are no chattel mortgages in Louisiana.

MAINE.

Whoever, with fraudulent intent to place mortgaged personal property beyond control of mortgagee, removes or conceals or aids or abets in removing or concealing it, and any mortgagor who assents to such removal or concealment, is punishable by fine not exceeding \$1,000 or imprisonment not exceeding one year. Revised Statutes of 1903, p. 941, § 4.

Personal property mortgaged, of which the debtor has the right of redemption, may be attached and sold, as if unencumbered, if attaching creditor first tenders or pays to mortgagee amount unpaid on the demand secured. When the personal property is claimed by virtue of the mortgage, the claimant shall not bring action against attaching officer, until he gives him at least forty-eight hours' written notice of claim and amount, and officer or creditor may, within that time, discharge claim by paying or tendering amount due, or he may restore the property. Officer may give claimant written notice of attachment; and if he does not, within ten days thereafter, deliver to officer a true account of amount due on claim, he waives right to hold the property thereon; and if account false, he forfeits to creditor double amount of excess, to be recovered in action on case. *Ibid.*, p. 726, §§ 44-46.

No mortgage of household furniture made to secure a loan for less than two hundred dollars shall be valid unless it states with substantial accuracy amount of loan, time for which it is made, rate of interest, and the actual expense, not exceeding three dollars, of making and securing it. *Ibid.*, p. 432, §§ 4 and 2.

When a loan for less than two hundred dollars is secured by chattel mortgage, the creditor shall discharge it upon payment or tender to him of sum actually borrowed and the specified interest, not exceeding three per cent a month for not exceeding three months, and then not exceeding fifteen per cent a year, and a sum not exceeding three dollars for actual expense of making loan and securing it; and such payment or tender may be made by debtor or any person having an interest in the property. *Ibid.*, p. 432, §§ 3 and 2.

Whoever knowingly and with intent to defraud, sells, conveys, mortgages, or pledges to another, personal property already mortgaged or to which he has no title without notice to purchaser of such mortgage or want of title, is guilty of cheating by false pretenses. *Ibid.*, p. 941, § 1.

No chattel mortgage is valid against anyone except the parties, unless possession of property is delivered to and retained by mortgagee, or mortgage is recorded by clerk of city, town, or plantation organized for any purpose, where mortgagor resides when mortgage given. When all mortgagors reside without State, it shall be recorded in city, town, or plantation where property is when mortgage made; but, if some of mortgagors reside in State, then in cities, towns, or plantations where they reside, when mortgage given. Mortgage by corporation shall be recorded in town where it has its established place of business. If any mortgagor resides in unorganized place, mortgage shall be recorded in the oldest adjoining town or plantation, organized as aforesaid, in the county. The clerk shall record mortgage in a book kept for that purpose and it shall be considered recorded when received. No consent by the mortgagee to mortgagor for the sale or exchange of the property shall be valid unless in writing and signed by mortgagee or his assigns. *Ibid.*, p. 802, §§ 1 and 2, chap. 93.

When condition of chattel mortgage broken, mortgagor or person claiming under him may redeem the property before it is sold by virtue of contract between parties or execution against mortgagor, or before right of redemption foreclosed, by paying or tendering to mortgagee or person holding the mortgage by assignment thereof recorded where mortgage is recorded, the sum due, or by performing or offering to perform the conditions thereof, when not

for payment of money, with all reasonable charges incurred; and the property, if not immediately restored, may be replevied, or damages for withholding it may be recovered in action on the case. *Ibid.*, p. 802, § 3.

Mortgagee or assignee, after condition broken, may give to mortgagor or assignee, when his assignment is recorded where mortgage recorded, written notice of intention to foreclose by leaving a copy with mortgagor or such assignee, or if mortgagor cannot be found by reasonable diligence or is out of State, though resident therein, by leaving the copy at his last and usual place of abode or publishing it once a week, for three successive weeks, in one of principal newspapers published in town where mortgage recorded. When mortgagor or assignee of record is not a resident of State and no newspaper is published in such town, the notice may be published in any newspaper printed in county where mortgage recorded. *Ibid.*, pp. 802, 803, § 4.

The notice with affidavit of service, or a copy of last publication, with name and date of paper, shall be recorded where mortgage recorded, and the copy of such record is evidence that the notice has been given. If mortgagee or assignee is not resident of State, he shall, at time of recording the notice, record therewith his appointment of an agent resident in same town, to receive satisfaction of mortgage; and payment or tender may be made to him. If he does not appoint such agent, the right to redeem is not forfeited. *Ibid.*, p. 803, § 5.

The right to redeem is forfeited, except as above provided, if the money to be paid or other thing to be done is not paid or performed, or tender made, within sixty days after the notice is recorded; but a contract of bottomry, respondentia, transfer, assignment or hypothecation of a vessel or goods, at sea or abroad, is not defeated, if possession taken as soon as may be after arrival in State. *Ibid.*, p. 803, § 6.

No agreement that personal property bargained and delivered to another shall remain property of seller till paid for is valid unless in writing, signed by person to be bound thereby; and when so made and signed, whether it is or is called a note, lease, conditional sale, purchase on instalments, or by any other name, and in whatever form it may be, it shall not be valid, except between original parties, unless recorded in office of clerk of town where purchaser resides at time of purchase. All such property, whether agreements recorded or not, shall be subject to redemption and to trustee process as provided in section fifty of chapter eighty-eight (Revised Statutes of 1903, p. 777, § 50), but the title may be foreclosed in manner provided for chattel mortgages. *Ibid.*, p. 872, § 5, chap. 113.

In contract for sale of equipment or rolling-stock for railroad, it may be agreed that the title to the property sold or contracted to be sold, although possession delivered immediately or subsequently, shall not vest in purchaser until purchase price paid, or that the seller shall have lien for unpaid purchase money. In contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at the termination of the contract, and the rentals or amounts to be received under it may, as paid, be treated as purchase money, and the title shall not vest in lessee or bailee until purchase price paid and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract is valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties and acknowledged by vendee or lessee or bailee or duly proved, like deeds, and filed for record in office of secretary of state, and each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by word "owner" or "lessor" or "bailor," as the case may be. These contracts shall be recorded in a book of records to be kept for that purpose; and on payment of purchase money and performance of terms and conditions stipulated, a written declaration to that effect may be made by vendor, lessor or bailor, or his or its assignee, on margin of record, duly attested, or by separate instrument acknowledged by vendor, lessor or bailor, or assignee, and recorded

as aforesaid. The provisions of section five of chapter one hundred and thirteen (Revised Statutes of 1903, p. 872, § 5, *supra*) shall not apply to any such contract nor shall any such contract be construed a mortgage or an instrument under chapter ninety-three (Revised Statutes of 1903, pp. 802-816), requiring foreclosure and entitling holder of property to equity of redemption, but any personal property held under any such contract shall be subject to trustee process as provided in section fifty of chapter eighty-eight. *Ibid.*, pp. 541, 542, §§ 95-97.

547. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of _____, paid by _____, the receipt whereof the said _____ do hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said _____, the following goods and chattels, viz.: [*description*]

TO HAVE AND TO HOLD, the said goods and chattels unto the said _____, heirs, executors, administrators, and assigns to _____ only proper use, benefit and behoof forever. And _____, the said _____, do avouch _____ to be the true and lawful owner of the said goods and chattels, and have in _____

full power, good right and lawful authority to dispose of the same in manner aforesaid; and _____ do for _____, heirs, executors and administrators, hereby covenant and agree to warrant and defend the said goods and chattels against the lawful claims and demands of all persons whomsoever, unto _____ the said _____, heirs, executors, administrators and assigns.

PROVIDED, NEVERTHELESS, that if the said _____, executors, administrators or assigns, shall pay unto the said _____, executors, administrators or assigns, the sum of _____ in _____ from this date, with interest at _____ per cent. per annum, payable _____ annually, then this bill of sale, as also certain promissory note bearing even date with these presents, given by the said _____ to the said _____, to pay the sum and interest at the time aforesaid, shall be void, otherwise shall remain in full force.

PROVIDED, ALSO, that it shall and may be lawful for said _____ to continue in possession of said goods and chattels until _____.

IN WITNESS WHEREOF, the said _____ have hereunto set _____ hand and seal this _____ day of _____, in the year of our Lord, one thousand nine hundred and _____.

[*Signature.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

MARYLAND.

No personal property of any description whereof vendor, mortgagor or donor remains in possession, shall pass, alter or change, or any property therein be transferred to any purchaser, mortgagee or donee, unless by bill of sale or mortgage, acknowledged and recorded as herein provided; but this shall not apply to any sale or gift, accompanied by delivery, nor invalidate such transfer as between the parties thereto. Public General Laws (1904), Art. 21, pp. 514, 515, § 41.

Bill of sale is sufficient in form, if it contain names of parties, consideration, description of property, and be signed and sealed by vendor and dated. *Ibid.*, p. 515, § 42.

Bill of sale shall be recorded in county or city where vendor or donor resides within twenty days from the date thereof. If he resides out of State and the property is located in the State, the bill of sale shall be recorded in county where property located, or in Baltimore city, if it be located in said city, within twenty days from the date of such bill of sale. *Ibid.*, pp. 515, 516, § 45.

A mortgage of personal property shall be executed, acknowledged and recorded as bills of sale. *Ibid.*, p. 516, § 46.

The acknowledgment of a chattel mortgage is the same as in the case of deeds. *Ibid.*, p. 515, §§ 43, 44.

Chattel mortgage is deemed to contain implied covenant by mortgagor to pay debt and interest specified in mortgage, unless contrary is expressed. *Ibid.*, p. 516, § 47.

Chattel mortgages are valid and take effect, except as between the parties, only from time of recording. *Ibid.*, p. 516, § 48.

Chattel mortgages may be assigned and released in same manner as mortgages of real property. *Ibid.*, p. 516, § 49.

The assignment of a mortgage may be made in the following form or to the like effect:

548. Assignment of Chattel Mortgage, Statutory Form.

"I hereby assign the within mortgage to the assignee.

"WITNESS MY HAND AND SEAL this day of

[SEAL]"

Such assignment shall be recorded at or near foot of mortgage in blank to be left by clerk who records mortgage. *Ibid.*, p. 512, § 32.

Every assignment in above form, or the same in substance, endorsed upon the original mortgage, shall be sufficient to convey to assignee every right of the assignor under the mortgage at time of assignment, as fully as any written instrument could do, but no assignment of any mortgage executed since March 27, 1902, except for the purpose of foreclosure, shall be valid, except between the parties, unless there be endorsed thereon the following oath or affirmation, to-wit:

549. Oath of Assignee of Chattel Mortgage, Statutory Form.

"That the assignee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage."

This oath or affirmation may be made by any agent or attorney of assignee who shall also make oath or affirmation that he is the agent or attorney, and shall be recorded with the assignment. *Ibid.*, pp. 512, 513, § 33.

Provisions as to release of mortgage. *Ibid.*, pp. 513, 514, §§ 34-38.

Release or assignment may be made by executor or assignee, and this applies to every assignee, whether he claims by direct assignment from mortgagee or his executor or under a series of assignments. *Ibid.*, p. 514, § 39.

If assignment or release of mortgage is by a separate deed or in any other mode than that prescribed in said sections 32, 34, 35 and 36, or if any proceeding to foreclose mortgage is had, it shall be duty of the clerks of the circuit courts of the counties to enter in margin of the record of original paper a memorandum of place where deed of assignment or release or proceeding of foreclosure is recorded. This section shall not apply to Baltimore city. *Ibid.*, p. 514, § 40.

No chattel mortgage shall be valid, except between the parties, unless the mortgagees or some one of them, or agent of some one of them, shall make affidavit that the consideration in the mortgage is true and bona fide as

therein set forth, and no chattel mortgage executed since March 27, 1902, shall be valid, except between the parties, unless in addition to the above affidavit the mortgagees or some one of them or agent of some one of them shall make the further oath or affirmation prescribed by section 30, and such affidavit may be made at any time before recording and before any person authorized to take the acknowledgment of the mortgage. *Ibid.*, pp. 516, 517, § 50.

No mortgage shall be valid except between the parties, unless there be endorsed thereon an oath or affirmation of mortgagee that the consideration in the mortgage is true and bone fide as therein set forth; and unless there be endorsed on all mortgages executed since March 27, 1902, the following additional oath or affirmation, to-wit:

550. Oath by Mortgagee, Statutory Form.

"That the mortgagee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor to pay the tax levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage."

This affidavit may be made at any time before mortgage is recorded, before any one authorized to take acknowledgment of a mortgage, and affidavit shall be recorded with mortgage. *Ibid.*, p. 511, § 30.

The said affidavit may be made by one of several mortgagees or any agent of a mortgagee, but the agent must also make affidavit, to be endorsed upon the mortgage, that he is agent of the mortgagee or mortgagees, or some one of them; which affidavit shall be sufficient proof of each agency; and the president or other officer of a corporation, or the executor of the mortgagee may make such affidavit. *Ibid.*, p. 512, § 31.

Where bills of sale are, according to the intent of the parties, chattel mortgages, upon payment or discharge of the debts named in said bills of sale by the vendors, the vendee must release the bills of sale or retransfer the property to vendors, which release or retransfer may be made upon the original bills of sale, which may be returned to the record office, and said release or retransfers entered upon the record book where bill of sale is recorded, at end of record thereof, or said release or retransfer may be made in presence of clerk, with his attestation thereto, in record book in which bill of sale is recorded, at end of record thereof. *Ibid.*, p. 517, § 51.

551. Mortgage of Personal Property, Statutory Form.

I, _____, of _____ county, Maryland, being now indebted to _____, of _____ county, in the sum of _____ dollars, with interest from _____, in consideration thereof, do hereby bargain and sell to the said _____, the following property [*here describe property*]; provided, that if I, the said _____, shall pay to the said _____, the said sum of _____ dollars, with the interest thereon, on or before the _____ day of _____, then these presents shall be void.

WITNESS MY HAND AND SEAL, this _____ day of _____.

[SEAL.]

Ibid., pp. 520, 521, § 62.

The foregoing form is sufficient to convey personal property and the said form, or forms to like effect, shall be sufficient, and any covenant, limitation, restriction or proviso allowed by law may be added, annexed to or introduced with the said form. Any other form conforming to the rules hereinbefore laid down or to the rules of law shall be sufficient. *Ibid.*, pp. 517, 521, §§ 52, 64, 65.

Mortgagor of personal property in possession of same, or purchaser under unrecorded conditional, written contract, in possession, who, in case of mortgaged personal property, without consent of mortgagee or his assigns first had and obtained in writing, or who, in case of purchaser of personal property under unrecorded conditional, written contract, without consent first had and obtained in writing of conditional vendor or assigns, and with intent to defraud mortgagee or assigns and to defeat his or their lien under mortgage, or with intent to defraud the said conditional vendor, shall remove any of the property so mortgaged or purchased, as the case may be, beyond limits of city or county where located when so mortgaged or purchased, or who, with intent as aforesaid, removes, secretes, hypothecates, destroys or sells the same, shall be guilty of misdemeanor. *Ibid.*, Art. 27, pp. 834, 835, § 166.

Where railroad equipment and rolling stock, or other personal property to be used in or about operation of railroad, shall be sold to any person, firm or corporation, to be paid for in whole or part by installments, or shall be leased, rented, hired or delivered on condition that the same shall be used by person, firm, or corporation purchasing, leasing, renting, hiring or receiving same, the title to remain in vendor, lessor, renter, hirer or deliverer until agreed-upon price paid, such condition in regard to title so remaining notwithstanding delivery to and possession by other party shall be valid as to subsequent purchasers in good faith and creditors; but the term during which the rent or installments are to be paid shall not exceed ten years. Such contracts shall be in writing and acknowledged and recorded as deeds in county where vendor or lessor has principal office in state. *Ibid.*, Art. 21, pp. 526, 527, § 87.

Every deed conveying real estate or chattels, which by any other instrument or writing shall appear to have been intended only as security in nature of mortgage, though absolute in terms shall be considered a mortgage, and the person for whose benefit it is made shall have no benefit or advantage from the recording, unless every instrument and writing operating as defeasance or explanatory of its being mortgage or conditional deed, be recorded therewith. *Ibid.*, Art. 66, p. 1543, § 1.

No mortgage or deed in nature of mortgage shall be a lien or charge for any other principal sums than appear on its face and are specified and recited therein and particularly mentioned and expressed to be secured thereby at time of executing, nor for any sums to be loaned or advanced after the same is executed, except from time loan or advance is actually made; and no mortgage to secure future loans or advances shall be valid unless amounts and times when to be made, specifically stated in mortgage; this not to apply to mortgages to indemnify mortgagee against loss from being endorser or security nor to mortgages by brewers to maltsters to secure payment to latter of debts by former for malt and other material used in making malt liquors. *Ibid.*, pp. 1543, 1544, § 2.

In Baltimore and Prince George's counties no mortgage or deed in nature of mortgage shall be lien or charge for any other principal sums than appear on its face and are specified and recited therein and particularly mentioned and expressed to be secured thereby at time of executing; this not to apply to mortgages to indemnify mortgagee against loss from being endorser or security. *Ibid.*, p. 1544, § 3.

In all mortgages there may be inserted a clause authorizing mortgagee or any other person to be named therein to sell the mortgaged premises, whether lands or goods and chattels, upon such terms and on such contingencies as may be expressed therein, and where interests in any mortgage are held under one or more assignments, or otherwise, the power of sale shall be held divisible, and he or they holding any such interest who shall first institute proceedings to execute such power shall thereby acquire exclusive right to sell the mortgaged premises; and any sale made and set aside on the ground that the power is indivisible may, by the court that set it aside, be reviewed on petition of person who made the same or any other person interested therein, and said court may annul its former decree or order; and thereupon the same

proceedings shall be had and the said court shall have the same power as if sale not set aside, and the said court may confirm or set aside such sale for any other sufficient reason; provided, there has been no change of title or interest in mortgaged premises since such sale. *Ibid.*, p. 1545, § 6.

Before any person so authorized shall make any such sale, he shall give bond to the State in such penalty and with such security as shall be approved by judge or clerk of court of equity of city or county where mortgaged premises lie or, in case of goods and chattels, where the same may be, to abide by and fulfill any order or decree which shall be made by any court of equity in relation to sale of such mortgaged property or the proceeds thereof; and such bonds shall be as an indemnity to and for the security of all persons interested in the mortgaged property or the proceeds and be subject to be sued as other bonds taken in name of State and subject to same limitations and disabilities. *Ibid.*, p. 1546, § 7.

In all sales made in pursuance of such authority, the notice stated in mortgage shall be given, or, if no agreement as to notice, then the party offering for sale shall give twenty days' notice of time, place, and terms by advertisement in newspaper printed in county where premises lie, if there be one so published, and, if not, in newspaper having a large circulation in said county, and also by advertisement set up at court-house door of said county. *Ibid.*, p. 1546, § 8.

Such sales shall be reported under oath to court having chancery jurisdiction where sale made, and there shall be same proceedings on report as if made by a trustee under a decree of said court, and the court shall have full power to hear and determine any objections which may be filed against such sale by any person interested in property and may confirm or set aside sale. If set aside, a resale may be ordered to be made by party who made previous sale or court may, if justice requires, appoint a trustee to sell. Such sales, when confirmed and purchase money paid, shall pass all the title which the mortgagor had in the premises at time of recording mortgage. *Ibid.*, pp. 1546, 1547, §§ 9, 10, 11.

No title to mortgaged premises derived from any sale made in virtue of such power and confirmed as aforesaid shall be questioned, impeached or defeated, either at law or in equity, because the premises were purchased in by mortgagee or his assignee or legal representative, or for his benefit or account. *Ibid.*, p. 1548, § 14.

All mortgage sales shall be made in county or city where mortgaged premises situated; and where situated in more than one county, the sale may be in either. *Ibid.*, p. 1548, § 15.

The title to all promissory notes, other instruments and debts, secured by mortgages or deeds in nature of a mortgage shall from and after maturity of such notes, instruments or debts be conclusively presumed to be vested in the person, persons or body corporate holding the record title to such mortgage or deed and, if the mortgage or deed is released of record, the said note, instrument or debt shall, after such maturity, be conclusively presumed to be paid so far as any lien upon the mortgaged property is concerned. *Ibid.*, p. 1552, § 25.

When suit instituted to foreclose mortgage, the court may decree that, unless debt and costs be paid by a day fixed by the decree, the property or so much thereof as may be necessary for satisfaction of said debt and costs shall be sold; and such sale shall be for cash, unless plaintiff consent to sale on credit; and if upon the sale, under such decree, of whole mortgaged property, net proceeds, after costs allowed by court are satisfied, shall not suffice to satisfy the mortgage debt and accrued interest, as this shall be found by judgment of court upon report of auditor, court may, on motion of plaintiff, enter decree *in personam* against mortgagor or other party to suit, who is liable for the payment thereof; provided, mortgagee could sue at law on covenants in mortgage for residue of mortgage debt unsatisfied by proceeds of sale; which decree shall have same effect as judgment at law and may be enforced only in like manner. *Ibid.*, Art. 16, p. 441, § 202.

There is another similar section as to a deficiency judgment, but said other section provides that upon motion of plaintiff the mortgagee or his legal or equitable assignee, after due notice by summons or otherwise as the court may direct, the court may enter the decree *in personam* against mortgagor or other party to suit or proceeding who is liable for payment for amount of deficiency. *Ibid.*, Art. 66, p. 1551, § 24.

No corporation incorporated under laws of State nor any foreign corporation doing business in State shall offer to procure or act as agent for any person in procuring or making loan of money or other valuable thing on security of any chattels, nor make loan of money or other valuable thing on security of chattels or otherwise, except in its own proper corporate name and for its own behalf or benefit, and every security taken by any such corporation for any such loan shall express plainly the period for which the loan is made and the entire interest agreed to be paid for said loan for the term of such loan, not to exceed the rate of six per centum per annum on money or other thing loaned for the term of such loan; and any contract or security for any such loan, or providing for renewal or continuance of such loan, made in violation of this section, is void. Section does not apply to home-stead, building and loan associations of State. *Ibid.*, Art. 23, pp. 578, 579, § 112.

MASSACHUSETTS.

Mortgages of personal property shall, within fifteen days from date written in mortgage, be recorded on records of city or town where mortgagor resides when made and on records of city or town where he then principally transacts business or follows trade or calling. If mortgagor resides out of commonwealth, and property mortgaged is within commonwealth when made, mortgage shall be recorded on records of city or town where property then is. If a record in two different places is required and mortgage is recorded in one within said fifteen days, it may be recorded in other within ten days after date of first record. Unless property has been delivered to and retained by mortgagee, mortgage shall not be valid against any one except the parties, until recorded, and a record made subsequently to time limited shall be void. Revised Laws, 1902, chap. 198, p. 1706, § 1.

The above provisions shall not apply to mortgage of, or other instrument relative to, ship or vessel of United States, or to goods at sea or abroad if mortgagee takes possession of such goods as soon as may be after their arrival in commonwealth. *Ibid.*, p. 1707, § 2.

Mortgagor or person lawfully claiming under him may, after breach of condition, redeem property at any time before it is sold in pursuance of contract between parties or before right of redemption is foreclosed. The person entitled to redeem shall pay or tender to mortgagee or person claiming under him amount due or shall perform or offer to perform the condition and shall pay all reasonable and lawful charges and expenses incurred in care and custody of property or otherwise arising from mortgage; and if then property is not forthwith restored, may recover it in an action of replevin, or damages for its conversion in any appropriate action. *Ibid.*, p. 1707, § 4.

Mortgagee or assigns may, after breach of condition and subject to the provisions of section fifty-four of chapter one hundred and two, give to mortgagor or person in possession claiming the property, written notice of intention to foreclose for breach of condition, served by leaving copy with mortgagor or person so in possession or by publishing at least once in each of three successive weeks in one of principal newspapers, if any, published in city or town where mortgage properly recorded or property situated; otherwise, in one of principal newspapers published in such county. *Ibid.*, p. 1707, § 5.

The notice, with affidavit of service, shall be recorded where mortgage recorded, and the notice and affidavit, if so recorded, or a copy of record thereof shall be evidence of giving of notice. *Ibid.*, p. 1707, § 6.

If condition is not performed or tender of performance made within sixty days after notice is so recorded, right to redeem is foreclosed. *Ibid.*, p. 1707, § 7.

A notice of intention to foreclose mortgage of personal property, which is given to secure loans of less than one thousand dollars, under the provisions of said section five of chapter one hundred and ninety-eight, shall not be valid unless it expressly states where notice is to be recorded and that the right of redemption will be foreclosed sixty days after such recording. *Ibid.*, chap. 102, p. 869, § 54.

Loan of less than one thousand dollars shall be discharged upon payment or tender by debtor of principal sum borrowed and interest at rate of eighteen per cent per annum from time it was borrowed and a sum not exceeding five dollars for actual expense of making and securing loan; but lender shall be entitled to interest for six months at said rate if debt paid before expiration of that period. Payments in excess of said rate shall be applied in discharge of principal, and borrower must pay or tender only balance of principal and interest, at said rate, due after such application. The provisions of this section shall not affect any loan at a less rate than eighteen per cent per annum nor shall it affect so much of section three of chapter seventy-three as provides that, if no agreement for different rate, interest shall be at rate of six dollars upon each hundred dollars for a year. *Ibid.*, p. 869, § 51.

If loan of less than one thousand dollars is secured by mortgage, mortgagee shall discharge mortgage on payment or tender to him of amount legally due under provisions of sections fifty-one to fifty-five, inclusive, and such payment or tender may be made by debtor or a person having an interest in property mortgaged. *Ibid.*, p. 869, § 52.

Mortgage of household furniture on which interest charged at rate of eighteen per cent or more per annum, made to secure loan of less than one thousand dollars, shall not be valid, unless it states with substantial accuracy amount of loan, time for which it was made, rate of interest to be paid and actual expense of making and securing loan, nor unless it contains a provision that the debtor shall be notified in manner provided in section five of chapter one hundred and ninety-eight, of time and place of any sale to be made in foreclosure proceedings at least seven days before such sale. *Ibid.*, p. 869, § 53.

Whoever refuses or neglects after request to discharge a mortgage as provided in section fifty-two, shall be liable in action of tort to borrower for all damages resulting to him from any violation of said section. *Ibid.*, p. 869, § 55.

The provisions of sections fifty-one to fifty-five shall not apply to loan of less than two hundred dollars made by person holding license under sections fifty-seven to sixty-seven, nor to licensed pawnbrokers, nor affect section thirty-five of this chapter or section four of chapter one hundred and ninety-eight. *Ibid.*, pp. 869, 870, § 56.

The rate of interest which licensed pawnbrokers may receive on loans may be fixed by the licensing board. *Ibid.*, p. 866, § 35.

No person, corporation or partnership shall engage in the business of making loans secured by mortgage of household furniture or other personal property exempt from attachment for less than two hundred dollars nor at rate of interest greater than twelve per cent without first obtaining license for carrying on such business in city or town where business to be transacted. *Ibid.*, p. 870, § 57.

If contract for sale of personal property is made on condition that the title thereto shall not pass until purchase money paid and vendor on default takes from vendee possession of property, vendee may, within fifteen days after such taking, redeem property by paying to vendor full amount then unpaid, with interest and all lawful charges and expenses due to vendor. *Ibid.*, chap. 198, p. 1708, § 11.

Such contracts for sale of furniture or other household effects in form of a lease or otherwise shall be in writing and a copy shall be furnished to

vendee by vendor at time of such sale; and all payments made by or in behalf of vendee and all charges in nature of interest or otherwise, as they accrue, shall, if vendee so requests, be indorsed by vendor or agent on such copy. Failure of vendor through negligence to comply with any provision of this section suspends his rights under contract while failure continues. His refusal or wilful or fraudulent failure so to comply shall be waiver by him of condition of sale. *Ibid.*, p. 1708, § 12.

Thirty days at least before taking possession of said furniture or effects for default of vendee, vendor shall demand in writing of vendee or other person in charge of furniture or effects balance then due, and furnish to said vendee or other person itemized statement of account showing amount due. If said vendee or other person can by exercise of reasonable care and diligence be found by vendor, the fifteen days during which right of exemption exists under said section eleven shall not begin to run until said demand has been made, said statement furnished and said thirty days have expired. If seventy-five per cent or more of contract price has been paid by vendee whose right of exemption has expired, furniture or effects shall, if vendee or legal representative in writing so requests vendor, be sold by public auction after due advertisement, which shall be published at least three days prior to sale in one of principal newspapers, if any, published in city or town, otherwise in one of principal newspapers published in county, where furniture or effects situated. If vendor refuses or neglects to make the sale as provided herein, the right of redemption shall not be foreclosed. If a balance of the proceeds of sale remains after deducting actual expenses of sale by auction and paying from proceeds to vendor balance of contract price due him, it shall be paid to vendee or his legal representative. *Ibid.*, pp. 1708, 1709, § 13.

Whoever, with fraudulent intent to place mortgaged personal property beyond control of mortgagee, removes or conceals or aids or abets in removing or concealing same, and a mortgagor assenting to such removal or concealment, shall be punished by fine or imprisonment. *Ibid.*, chap. 208, p. 1759, § 68.

A mortgagor of personal property who sells or conveys same or any part without consent of mortgagee in writing, and without informing vendee or grantee that same is mortgaged, shall be punished by fine or imprisonment. *Ibid.*, p. 1759, § 69.

Any corporation organized under laws of commonwealth and authorized to erect and maintain poles, wires or other fixtures in, over or under streets and highways for purpose of furnishing electricity for light or power may secure payment of bonds issued by it by mortgage of franchise in connection with its corporeal property, so that all persons acquiring poles, wires or fixtures by virtue of mortgage shall have same rights and be subject to same obligations relative to their erection, care and maintenance as corporation would have had or been subject to if mortgage not made. Rate of interest on such bonds shall not exceed six per cent per annum. *Ibid.*, chap. 121, p. 1185, § 12.

Contract for sale of railroad or street railway rolling stock may stipulate that the title to property sold or contracted to be sold shall not vest in purchaser until purchase price paid, or that the vendor shall have lien for unpaid purchase money, although possession delivered immediately or at any subsequent time, and a contract for leasing or hiring of such property may stipulate that there be a conditional sale at termination of contract, and rentals or amounts to be received thereunder may, as paid, be treated as purchase money and title shall not vest in lessee or bailee until purchase price paid in full and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee. No such contract is valid against subsequent attaching creditor or subsequent bona fide purchaser for value without notice, unless in writing executed by parties and acknowledged by vendee, lessee or bailee before magistrate authorized to take acknowledgment of deeds and in same manner as deeds, and recorded in office of secretary of commonwealth; nor unless each locomotive, engine or car so sold, leased or hired, or

contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by the word "owner," "lessor" or "bailor," as the case may be. The provisions of chapter one hundred and ninety-eight shall not apply to such contracts. Upon payment in full of the purchase money and performance of terms and conditions stipulated in contract, a declaration in writing thereof may be made by vendor, lessor or bailor or assignee on margin of record of contract, duly attested, or by separate instrument acknowledged by vendor, lessor or bailor or his assignee, and recorded as aforesaid. *Ibid.*, chap. 111, p. 995, §§ 75, 76.

Personal property of debtor which is subject to mortgage, and of which debtor has right of redemption, may be attached and held as if unencumbered, if attaching creditor pays or tenders to mortgagee amount for which it is so liable within ten days after demand. The mortgagee, when demanding payment of the money due him, shall state in writing a just and true account of the debt or demand for which the property is liable to him and deliver it to attaching creditor or officer. If same is not paid or tendered to him within ten days thereafter, attachment is dissolved, property restored to him, and attaching creditor liable to him for damages sustained by attachment. If he demands and receives more than amount due him, he is liable in action by attaching creditor for money had and received for excess, with interest at rate of twelve per cent a year. *Ibid.*, chap. 157, pp. 1507, 1508, §§ 69-71.

Personal property, subject to a mortgage and in possession of mortgagor, may be attached as if unencumbered; and mortgagee or his assigns may be summoned in action in which the property is attached as trustee of mortgagor or his assigns to answer such questions as may be put to him or them by court or by its order relative to consideration of mortgage and amount due thereon. If on such examination or upon verdict of a jury as hereinafter provided, it appears the mortgage is valid, court, having first ascertained amount due upon it, may direct attaching creditor to pay same to mortgagee or his assigns within such time as it orders; and if he does not pay or tender it within said time, attachment shall be void and property shall be restored. If attaching creditor denies validity of mortgage and moves that the validity be tried by jury, court shall order such trial on issue framed under its direction, and if, upon such examination or verdict, mortgage is adjudged valid, mortgagee or his assigns shall recover his costs. *Ibid.*, p. 1508, §§ 74-76.

552. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of paid by _____, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said _____ the following goods and chattels, namely: [*description*]

TO HAVE AND TO HOLD all and singular the said goods and chattels to the said _____, and _____ executors, administrators, and assigns, to their own use and behoof forever.

And _____ hereby covenant with the vendee that _____ the lawful owner of the said goods and chattels; that they are free from all incumbrances, _____; that _____ have good right to sell the same as aforesaid; and that _____ will warrant and defend the same against the lawful claims and demands of all persons _____.

PROVIDED, NEVERTHELESS, that if _____, or _____ executors, administrators, or assigns, shall pay unto the vendee _____, or _____ executors, administrators, or assigns, the sum of _____, in _____ from this date, with interest as stated in _____ note of even date signed by _____, and until such payment shall keep the said goods and chattels insured against fire in a sum not less than _____.

dollars for the benefit of the vendee and executors, administrators, and assigns, in such form and in such insurance companies as they shall approve; shall not waste or destroy the said goods and chattels, nor suffer them or any part thereof to be attached on mesne process, and shall not, except with the consent in writing of the vendee or representatives, attempt to sell or to remove from the same or any part thereof,— then this deed, as also the aforesaid note, shall be void.

BUT UPON ANY DEFAULT in the performance or observance of the foregoing condition, the vendee, or executors, administrators, or assigns, may sell the said goods and chattels at public auction [first giving days' notice in writing of the time and place of sale to or representatives, or publishing such notice once a week for three successive weeks in some one newspaper published in said]. And out of the money arising from such sale the vendee or representatives shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them in relation to the said property, or to discharge any claims or liens of third persons affecting the same; rendering the surplus, if any, to or executors, administrators, or assigns.

AND IT IS AGREED that the vendee, or executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid; and that until default in the performance or observance of the condition of this deed and executors, administrators, and assigns, may retain possession of the above mortgaged property and may use and enjoy the same, but after such default, the vendee or those claiming under may take immediate possession of said property and for that purpose may, so far as can give authority therefor, enter upon any premises on which said property or any part thereof may be situated, and remove the same therefrom.*

IN WITNESS WHEREOF, the said hereunto set hand and seal this day of , in the year one thousand nine hundred and .
[Signatures and seals.]

Signed and sealed in presence of
[Signatures.]

553. Chattel Mortgage on Household Furniture.

[For chattel mortgage on household furniture insert in place of words in brackets the following]: First notifying the debtor, in the manner provided in section five of chapter one hundred and ninety-eight of the Revised Laws, of the time and place of any sale to be made in foreclosure proceedings at least seven days before such sale.

[Also at the * in the next preceding form insert words]: The actual expense of securing this loan has been . . .

MICHIGAN.

All personal taxes shall be lien on all personal property of persons assessed from and after the first day of December in each year and shall take precedence of any chattel mortgage executed after said date, except where such property is actually sold in regular course of trade. Compiled Laws of 1897, § 3863.

Every mortgage or conveyance intended to operate as mortgage of goods and chattels, not accompanied by immediate delivery and followed by actual and continued change of possession, shall be absolutely void against creditors and subsequent purchasers or mortgagees in good faith, unless mortgage or copy is filed in office of township clerk or city clerk or city recorder of cities having no officer known as city clerk, where mortgagor resides, except when mortgagor is non-resident of state, when mortgage or copy shall be filed in office of township clerk or city clerk or such city recorder where property is. *Ibid.*, § 9523.

Every such mortgage shall cease to be valid against creditors or subsequent purchasers and mortgagees in good faith, after expiration of one year from filing same or copy, unless within thirty days next preceding expiration of the year, mortgagee, his agent or attorney, shall make and annex to instrument or copy on file affidavit, setting forth interest mortgagee has, by virtue of mortgage, in property; upon which affidavit the township or city clerk shall endorse time of filing; but such affidavit made and filed before purchase of mortgaged property is made or other mortgage received or lien obtained thereon in good faith, shall be as valid to continue mortgage as if made and filed within the period above provided. *Ibid.*, § 9526.

Effect of such affidavit shall not continue beyond one year from time when mortgage would otherwise cease to be valid, against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when such mortgage would otherwise cease to be valid, similar affidavit may be filed and annexed as provided in preceding section and with like effect. *Ibid.*, § 9527.

Certified copy of such instrument or copy thereof so filed, including the affidavits so annexed, shall be evidence but only of the fact that such instrument, copy or affidavit was received and filed according to the clerk's endorsement thereon and of no other fact. *Ibid.*, § 9528.

At any sale of property upon foreclosure of chattel mortgage, mortgagee or his assignees or legal representatives may fairly and in good faith, purchase property so offered for sale or any part thereof. *Ibid.*, § 9530.

Provisions as to discharge of chattel mortgages. *Ibid.*, §§ 9531, 9532.

Chattel mortgage is void on any property exempt from levy and sale under execution, described in this section, except the tools, implements, materials, stock, apparatus, team, vehicle, horses, harness or other things to enable any person to carry on the profession, trade, occupation, or business in which wholly or principally engaged, not exceeding in value two hundred and fifty dollars, unless such mortgage be signed by wife of party making it, if he have any. *Ibid.*, § 10322.

Owner or keeper of stallion shall, after demand upon owner of mare for price agreed upon for service, have lien upon the get of such stallion for period of six months after birth of foal for payment of services of stallion, but not if owner or keeper has fraudulently misrepresented to owner of dam as to the breeding of the stallion. The owner or keeper of stallion to obtain such lien, shall, after such demand and between the rendition of such services and the time when a colt is foaled, file with township clerk where dam is owned, agreement by owner of dam for such service or copy, with description of dam as to age, color, or other marks, as the person filing such agreement is able to give. Upon filing such agreement, with the description of the dam, the same shall operate in all respects as a chattel mortgage during the said period of six months, with power of sale on the foal of such dam, and may be collected, enforced and discharged like chattel mortgage. *Ibid.*, §§ 10784-10787.

In cases where, by the general maritime law or laws or any other of the United States, now or hereafter to be passed, liens similar to those provided for in this act (chapter 298 of 1864, Collection of Demands against Water-craft) shall have been created against water-craft, the same may be enforced under the proceedings established by this act in like manner as if they accrued in this state, and chattel mortgages upon such water-craft, or other

interests therein held in such other states, under the laws thereof, may be enforced hereunder against surplus proceeds, in like manner as if held in this state under its laws. *Ibid.*, § 10831.

If any person executing chattel mortgage or conveyance intended to operate as such, shall fraudulently embezzle, remove, conceal or dispose of any of the goods or chattels, with intent to injure or defraud mortgagee or assignee, he is guilty of a felony if the property so embezzled, removed, concealed or disposed of shall be of the value of twenty-five dollars or more, but if not of the value of twenty-five dollars, of a misdemeanor. *Ibid.*, § 11619.

Any person fraudulently embezzling, removing, concealing or disposing of any goods or chattels mortgaged by another, knowing the goods to have been so mortgaged, with intent to injure or defraud mortgagee or assignee, is guilty of felony, if the property removed, concealed or disposed of shall be of value of twenty-five dollars or more, but if not of the value of twenty-five dollars, of a misdemeanor. *Ibid.*, § 11620.

In contract for sale of railroad or street railway equipment or rolling-stock, it may be agreed that the title to the property sold or contracted to be sold, although possession may be delivered immediately or subsequently, shall not vest in purchaser until purchase price paid, or that the seller shall have lien for unpaid purchase money. And in contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at the termination of contract, and rentals or amounts to be received under contract may, as paid, be treated as purchase money, and title shall not vest in lessee or bailee until purchase price paid and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract is valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by the parties and acknowledged by vendee or lessee or bailee or proved, like a deed, and filed for record in office of secretary of state of this commonwealth, and each locomotive engine, or car so sold, leased or hired or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by word "owner" or "lessor" or "bailor," as the case may be. Contracts shall be indexed in a book of records. On payment in full of purchase money and performance of terms, and conditions stipulated in contract, a declaration in writing to that effect shall be made by vendor, lessor, or bailor, or assignee, on margin of the index of the contract, duly attested, or by separate instrument, acknowledged by vendor, lessor, or bailor, or assignee, filed and indexed. Vendor or lessor or bailor or assignee failing or refusing to make such declaration in writing on margin of index of contracts within thirty days, that such purchase money is paid in full, is liable to a fine of not more than five hundred dollars. *Ibid.*, §§ 6336, 6337.

Any person who shall embezzle, fraudulently remove, conceal or dispose of any goods, chattels or effects leased or let to him by written lease or instrument in writing intended to operate as lease, or any personal property or effects of another in his possession under contract of purchase not yet fulfilled, and any person in possession of such goods, chattels or effects, knowing them to be subject to such lease or contract of purchase, who shall so embezzle, remove, conceal or dispose of same, with intent to injure or defraud lessor or owner, is guilty of felony, if of value of twenty-five dollars or more, but, if the property so embezzled, removed, concealed or disposed of is not of the value of twenty-five dollars, of a misdemeanor. *Ibid.*, § 11621.

554. Chattel Mortgage, Short Form.

KNOW ALL MEN BY THESE PRESENTS, that _____, part of the first part, being justly indebted unto _____, part of the second part, in the sum of _____ dollars, ha _____, for the purpose of securing payment of said debt, and the interest thereof, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said part of the

second part the following goods, chattels and personal property, to wit: [description] which said above described goods, chattels and property at the date hereof, are situate at _____, in the _____, of _____ county, Michigan, and are free and clear from all liens, conveyances, incumbrances and levies _____, and for a valuable consideration _____ hereby warrant the above representations to be true.

[TO HAVE AND TO HOLD THE SAME FOREVER, provided, always, and the condition of these presents is such that if the said part of the first part shall pay or cause to be paid to the said part of the second part the said sum of _____ dollars, being the debt aforesaid, with _____ interest _____, according to the terms of certain promissory note bearing even date herewith, executed by said _____, to said part of the second part, and to which this mortgage is collateral security, then this mortgage and said promissory note shall be void and of no effect. And _____, the said part of the first part agree to pay the same accordingly. But if default be made in such payment, the said part of the second part hereby authorized to and shall sell at public auction, after the like notice as is required by law for constables' sales, the goods, chattels and personal property hereinbefore mentioned, or so much thereof as may be necessary to satisfy the said debt, interest and reasonable expenses, and to retain the same out of the proceeds of such sale, the over-plus or residue, if any, to belong and to be returned to _____. And the said part of the second part is hereby authorized, at any time when _____ shall deem _____ insecure, or if the said part of the first part shall sell, assign or dispose of, or attempt to sell, assign or dispose of, the whole or any part of the said goods and chattels, or remove or attempt to remove the whole or any part thereof from the said _____ without the written assent of the part of the second part, then and from thenceforth it shall and may be lawful for the said part of the second part, _____ executors, administrators or assigns, or his, her or their authorized agents, to enter upon the premises of the said part of the first part or any place or places where the said goods and chattels, or any part thereof, may be, and take possession thereof, and the same retain in some convenient place, at the risk and expense of the said part of the _____ part until the said sum of money shall become due as aforesaid, and then to dispose of the same in the manner above specified.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the _____ day of _____, A. D. 19 _____.

[Signature.]

Signed, sealed and delivered in presence of

[Signatures.]

STATE OF MICHIGAN, }
County of _____ } ss.:

_____, being duly sworn, deposes and says that he _____, the mortgagor named in the annexed chattel mortgage, that he has knowledge of the facts and that the consideration of said instrument was actual and adequate

¹ Insert "is" or "is one of" or "makes this affidavit for."

and that the same was given in good faith for the purposes therein set forth.
 Subscribed and sworn to before me, [Signature]
 this day of , 19 .

, Notary Public, county, Michigan.

My commission expires , 19 .

555. Chattel Mortgage — Crop Clause.

KNOW ALL MEN BY THESE PRESENTS, that this mortgage, made the day of , in the year one thousand nine hundred and , by of , county of , state of Minnesota, mortgagor , to , mortgagee.

WITNESSETH, that the said mortgagor being justly indebted to said mortgagee in the sum of dollars, which is hereby confessed and acknowledged, ha for the purpose of securing the payment of said debt, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said mortgagee, and assigns, all that certain personal property described as follows, to wit: All crops of every name, nature and description, consisting of acres of wheat, acres of oats, acres of barley, acres of corn, , which have been or may be hereafter sown, grown, planted, cultivated or harvested during the year A. D. 19 , , and until said debt is fully paid, on the following described real estate, situate, lying and being in said county of , and state of Minnesota, to wit: [*description*]

And in case the said crops are not properly sown, planted, cultivated, harvested, threshed or cared for, the said mortgagee ha the right to enter on said land, and do all that is necessary to properly put in, harvest, thresh and market such crops, and reimburse for all labor and expense out of the proceeds thereof, the portion remaining to be applied on the debt hereby secured. Also, the following described personal property, to wit: [*description*] All the said property being now in the possession of said mortgagor in the of , in the county of , and state aforesaid and free from all incumbrance.

TO HAVE AND TO HOLD, ALL AND SINGULAR, the personal property aforesaid, forever, as security for the payment of the note and obligation hereinafter described. Provided always, and these presents are upon this express condition: That if the said mortgagor shall pay or cause to be paid unto the said mortgagee , executors, administrators or assigns, the sum of dollars, according to the conditions of certain promissory note payable to at ,

\$ dated , 19 , due , 19 , with interest at per cent. per annum until paid; \$, dated , 19 , due , 19 , with interest at per cent. per annum until paid; \$, dated , 19 , due , 19 , with interest at per cent. per annum until paid, or any other note of said mortgagor given hereafter to the mortgagee herein, as a renewal thereof . Then these presents to be void and of no effect. But if default shall be made in the payment of said sum or sums of money, or the interest thereon, at the time the said note or notes shall become due, or if any attempt shall be made by the said mortgagor or any other person to dispose of or injure said property, or to remove said property, or

any part thereof, from the said county of _____, or, if said mortgagor do not take proper care of said property, or if said mortgagee shall at any time deem _____ insecure, then, thereupon and thereafter it shall be lawful, and the said mortgagor hereby authorize said mortgagee, _____, executors, administrators or assigns, or _____ authorized agent, to take said property, wherever the same may be found, and hold or sell and dispose of the same and all equity of redemption, at public auction, with notice as provided by law, and on such terms as said mortgagee or _____ agent may see fit, and said mortgagee may become the purchaser of said property at said sale, retaining such amount as shall pay the aforesaid note or notes and interest thereon, and an attorney's fee of ten dollars, and such other expenses as may have been incurred, returning the surplus money, if any there may be, to the said mortgagor or _____ assigns, and the said mortgagor hereby waive demand and personal notice of the time and place of sale. And as long as the conditions of this mortgage are fulfilled, the said mortgagor to remain in peaceful possession of said property, and in consideration thereof he agree to keep said property in as good condition as it now is, at _____ own cost and expense.

IN TESTIMONY WHEREOF, the said mortgagor ha _____ hereunto set hand and seal this _____ day of _____, A. D. 19 _____.

[Signature.]

Signed, sealed and delivered in presence of _____

[Signatures.]

556. Commercial Chattel Mortgage.

THIS INDENTURE, made this _____ day of _____, in the year one thousand nine hundred and _____,

BETWEEN _____, part of the first part, and _____, part of the second part,

WITNESSETH, that said part of the first part, for and in consideration of the sum of _____ dollars, to h _____ in hand paid by said part of the second part, and for the purpose of securing the payment of said sum, and of any future sums for which said part of the first part may at any time hereafter become indebted to said part of the second part, do hereby grant, bargain, sell, and mortgage to said part of the second part, the following described goods, chattels, and personal property, to wit: [description] and, also, all goods, wares, merchandize, fixtures, furniture and personal property of every kind and nature, now in and about the _____ store occupied and used by said part of the first part in carrying on h _____ business, at the _____ of _____, in the county of _____, state of Michigan, and, also, all the goods, wares, merchandize, fixtures, furniture and personal property of every kind and nature, which at any time hereafter may be purchased for, or added to, or used in connection with, said stock, or business, or commingled with the same _____.

PROVIDED ALWAYS, and these presents are made upon this express condition, that if said part of the first part shall pay or cause to be paid to said part of the second part, the said sum of _____ dollars, with interest thereon, as follows: [describe terms of debt] and shall also pay or cause to be paid,

all bills, accounts, notes, and obligations which at any time may be made or incurred by, or be owing by said part of the first part to said part of the second part, , at the time and in the manner in which the same shall become due and payable, together with the interest thereon, then these presents shall cease and become null and void.

Said part of the first part do hereby covenant and agree that he lawfully possessed of the above described goods, chattels, and personal property as of his own property, and that the same are free and clear from all liens, conveyances, mortgages, encumbrances, and levies , and the said part of the first part hereby warrant the above representations to be true.

Said part of the first part further covenant and agree that he will add to said stock and replenish the same, as rapidly as goods shall be sold therefrom, as nearly as may be, so that the stock on hand shall at no time be worth less than per cent. more (if inventoried at cost price), than the entire indebtedness hereby secured from time to time existing; also, that said part of the second part shall have the right at any time to enter upon same premises, or wherever the goods covered by this mortgage may be, and make an examination and inventory of the same; also, that no goods, covered by this mortgage, shall be sold by said part of the first part, except in the ordinary course of retail trade, and then only for cash, or to responsible persons and on short time, also, that said part of the first part will not remove the property covered by this mortgage, or any part thereof, except in the ordinary course of retail business, from the said , in the , of , county and state aforesaid, without the written consent to be hereon indorsed, of said part of the second part.

Said part of the first part further covenant and agree that he will keep the interest of said part of the second part in the goods and chattels covered by this mortgage insured against loss or damage by fire, during the continuance of this mortgage, and in default thereof it shall be lawful for said part of the second part to effect such insurance, and the premiums so paid shall be a lien added to the amount secured hereby and payable forthwith.

Said part of the first part also covenant and agree that he will pay or cause to be paid to said part of the second part the indebtedness hereby secured, including that heretofore existing as well as that hereafter to be contracted, at the time or times that such indebtedness shall become due, and that this mortgage shall be a continuing security for the payment of such indebtedness until discharged by writing.

IT IS HEREBY AGREED by and between the parties hereto that in case default is made by said part of the first part in any payments of indebtedness hereby secured, whether heretofore existing or hereafter to be contracted, as such payments shall become due, or in keeping up such insurance, or in keeping up and replenishing said stock as aforesaid, or in any of the covenants and conditions herein contained, then, in any such case, the said part of the second part shall have the right, at his option, during such default, to declare the whole sum or sums secured hereby and then remaining unpaid, immediately due and payable, and a demand of possession, or a seizure of any

part of said property covered by this mortgage shall be considered a sufficient notice of h intention to declare the same due.

Said part of the second part hereby agree that until default in, or the violation of one or more of the covenants and agreements herein contained, by said part of the first part, or possession is taken or demanded as herein provided for by said part of the second part, of said property covered by this mortgage, the said part of the first part may possess, sell, use, and enjoy in the usual and regular manner of retail trade, without any disturbance or interference by said part of the second part, all the said property covered by this mortgage.

AND IT IS FURTHER AGREED by and between the parties hereto, that in case default shall be made by said part of the first part in any payments of indebtedness hereby secured, whether heretofore existing or hereafter to be contracted, as such payments shall become due, or in any of the covenants or agreements herein contained or if said part of the first part shall sell, or assign, or attempt to sell or assign the whole or any part of said property at any time covered by this mortgage, except as hereinbefore provided for, or shall remove or attempt to remove the same or any part thereof from the said without the written consent of said part of the second part to be hereon indorsed, or in case the whole amount secured hereby is declared due as hereinbefore provided for , then and from thenceforth, that is to say, upon the happening of any one of these events, it shall and may be lawful for said part of the second part, and h hereby empowered and authorized as a part of this security, to enter upon said premises, or any place or places where any of the property covered by this mortgage is situated, , and to take possession of the same, and to hold the same at the said place of business of said part of the first part, or the said part of the second part may remove such property to such other place or places, within the , state of Michigan, as h may deem desirable, and there retain such property, as h may deem most safe and convenient, and for such time as may be deemed best by h , at the risk and expense of said part of the first part, and, then to sell such property either in said of or at such other place within the state of Michigan, to which said property may have been removed by said part of the second part, either, at private sale or public auction, in bulk or in parcels, and if at public sale, after giving at least days' notice by written or printed notices to be posted in three or four public places in the city, village, or township, in which the said property shall be offered for sale, and out of the moneys arising from such sale to pay the expenses of such seizure, holding, removal, and sale, including, in case an attorney is employed to foreclose this mortgage by a sale of the property covered hereby, or in chancery, an attorney fee of dollars, and all sums of money which may be owing under this mortgage, to said part of the second part, and render the surplus money, if any, to said part of the first part.

IT IS ALSO AGREED by the parties hereto that the covenants and agreements herein contained shall apply to and be binding on their heirs, representatives and assigns respectively.

IN WITNESS WHEREOF, said part of the first part h hereunto set h hand and seal this day of , in the year one thousand nine hundred and .

[Signatures.]

In presence of
[Signature.]

STATE OF MICHIGAN, }
County of , } ss.

, being duly sworn, deposes and says that he¹ the mortgagor named in the annexed chattel mortgage, that he has knowledge of the facts and that the consideration of said instrument was actual and adequate and that the same was given in good faith for the purposes therein set forth.

[Signature.]

Subscribed and sworn to before me,
this day of , 19 .

, Notary Public, County, Michigan.

My commission expires , 19 .

557. Chattel Mortgage, With Attorney Fee and Insurance Clause.

KNOW ALL MEN BY THESE PRESENTS, that , part of the first part, being justly indebted unto , part of the second part, in the sum of dollars, ha , for the purpose of securing payment of said debt, and the interest thereof, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said part of the second part the following goods, chattels and personal property, to wit: [description] which said above described goods, chattels and property at the date hereof, are situate at , in the , of county, Michigan, and are free and clear from all liens, conveyances, encumbrances and levies , and for a valuable consideration hereby warrant the above representations to be true.

TO HAVE AND TO HOLD THE SAME FOREVER. Provided, always, and the condition of these presents is such, that if the said part of the first part shall pay or cause to be paid to the said part of the second part the said sum of dollars, being the debt aforesaid, with interest , according to the terms of certain promissory note bearing even date herewith, executed by said to said part of the second part, and to which this mortgage is collateral security, then this mortgage and said promissory note shall be void and of no effect. And , the said part of the first part, agree to pay the same accordingly. But if default be made in such payment, the said part of the second part hereby authorized to and shall sell at public auction, after the like notice as is required by law for constables' sales, the goods, chattels and personal property hereinbefore mentioned, or so much thereof as may be necessary to satisfy the said debt, interest, and dollars as an attorney fee, should any proceedings be taken to foreclose this

¹ Insert "is" or "is one of" or "he makes this affidavit for"

mortgage, and reasonable expenses, and to retain the same out of the proceeds of such sale; the overplus or residue, if any, to belong to, and to be returned to said part of the first part.

Said part of the first part covenant and agree that he will keep the interest of said part of the second part in the goods and chattels covered by this mortgage insured against loss or damage by fire, during the continuance of this mortgage, and in default thereof it shall be lawful for said part of the second part to effect such insurance, and the premiums so paid shall be a lien added to the amount secured hereby and payable forthwith, and in case of sale under the authority herein, the sum so paid for insurance, together with interest thereon at the rate of per cent. per annum, shall be retained out of the proceeds of such sale in addition to the amounts above mentioned.

And the said part of the second part hereby authorized at any time when he shall deem unsecured, or if the said part of the first part shall sell, assign or dispose of, or attempt to sell, assign or dispose of the whole or any part of the said goods and chattels; or remove or attempt to remove the whole or any part thereof, from the said , without the written assent of the part of the second part, then and from thenceforth it shall and may be lawful for the said part of the second part, executors, administrators or assigns, or his, her or their authorized agent, to enter upon the premises of the said part of the first part, or any place or places where the said goods and chattels, or any part thereof, may be, and take possession thereof, and the same retain in some convenient place, at the risk and expense of the said part of the part until the said sum of money shall become due as aforesaid, and then to dispose of the same in the manner above specified.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

STATE OF MICHIGAN, }
County of , } ss.

, being duly sworn, deposes and says that het the mortgagor named in the annexed chattel mortgage, that he has knowledge of the facts and that the consideration of said instrument was actual and adequate and that the same was given in good faith for the purposes therein set forth.

[Signature.]

Subscribed and sworn to before me,

this day of , 19 .

, Notary Public, County, Michigan.

My commission expires , 19 .

¹ Insert "is" or "or is one of" or "makes this affidavit for."

MINNESOTA.

Chattel mortgage is void against creditors and subsequent purchasers and incumbrancers in good faith, unless it appears such mortgage was executed in good faith and not for purpose of hindering, delaying or defrauding any creditor of mortgagor and unless accompanied by immediate delivery and followed by continued change of possession of the property, or the mortgage is filed as hereinafter provided. Revised Laws of 1905, § 3461.

Every such mortgage, when executed in presence of two attesting witnesses and acknowledged, may be filed with clerk or recorder of town or municipality where mortgagor resided at time of its execution, if resident of State, or where property situated, if non-resident. If such place be in unorganized town, filing may be with register of deeds of county. Duplicates or certified copies may be filed in other places wherein any part of such property was situated when same was made. *Ibid.*, § 3462.

Chattel mortgage so filed shall be notice to all persons of the existence and terms thereof. The lien of any mortgage so filed shall continue until the debt secured thereby is paid or barred by statute; but against creditors and purchasers or mortgagees in good faith it shall not continue more than six years from date of filing, unless indebtedness not then due and payable by its terms, in which case it shall so continue for two years after maturity of debt and no longer. *Ibid.*, § 3464.

No mortgage of following personal property, to wit, the family bible, family pictures, school books or library and musical instruments for use of family; wearing apparel of debtor and family, beds, bedsteads and bedding kept and used by debtor and family, stoves and appendages put up or kept for use of debtor and family, cooking utensils, and other household furniture not exceeding five hundred dollars in value, and one sewing machine, given or made by a married man or woman is valid as to such exempt property, unless by written instrument, jointly executed and acknowledged by husband and wife, if both are living. *Ibid.*, § 3465.

When conditions of chattel mortgage fully performed, mortgagee, his representatives or assigns, shall give duplicate satisfactions, one of which he shall deliver to owner of mortgaged property, and the other he shall file at his own expense, with officer having custody of mortgage, who shall note satisfaction in his index and surrender mortgage. Such satisfactions need not be witnessed or acknowledged. Failure to file such satisfaction within sixty days after condition performed shall subject its holder to treble damages at suit of person injured by such neglect. *Ibid.*, § 3466.

When condition of such mortgage broken, mortgagor or any person lawfully claiming under him, may redeem at any time before right of redemption is foreclosed, by paying or tendering to holder, his authorized agent or attorney, sum due on debt secured, or by offering performance of thing to be done, with all lawful charges and expenses incurred in care of property. Such payment, or tender if kept good, when made by owner, shall discharge lien of mortgage; and when made by subsequent purchaser, mortgagee, or creditor having lien it shall subrogate him to all rights of holder of mortgage. *Ibid.*, § 3467.

No mortgagee, nor anyone claiming under him, shall arbitrarily, or without just and sufficient cause, declare any condition or stipulation of mortgage broken prior to default in performance, but when such mortgage authorizes sale in case of default, upon condition broken, mortgage may be foreclosed and property sold, at public sale and in public view, at some convenient place in county where same or some portion thereof is situated at time of commencement of foreclosure proceedings, or in which mortgage is filed. *Ibid.*, § 3468.

At least ten days before sale a notice containing names of mortgagor and mortgagee and assignee, if any, date of mortgage, nature of default and amount then due, description of property, time and place of sale, name of party, agent, or attorney foreclosing, and, when an attorney, for whom — shall be served upon person from whose possession property was taken, and

upon mortgagor, if he resides or can be found in county where foreclosure is had, in the manner provided for service of district court summons, and ten days' posted notice shall also be given. At time and place of sale the person conducting same shall sell property or so much thereof as shall satisfy the debt secured, with costs and expenses, and deliver remainder, if any, to owner. *Ibid.*, § 3469.

Within five days after sale, person making same shall file in office where mortgage was filed a verified or, if an officer, a certified report of his proceedings, specifying property sold and that returned, if any, and amount received, and itemized statement of all costs and expenses, amount applied on mortgage, and amount, if any, returned to owner. When so filed, such report or a certified copy shall be prima facie evidence of facts therein stated. *Ibid.*, § 3470.

When attorney's foreclosure fee provided for in mortgage, amount thereof may be deducted and paid only when attorney, within ten days after sale, shall file in office where mortgage filed his affidavit that he is regularly admitted attorney of State, that he foreclosed mortgage, and has received or is entitled to said fee. *Ibid.*, § 3471.

At any time within two days after sale any of parties entitled to redeem before sale may redeem property sold or any part which has been sold separately and for separate price, by paying to purchaser or assigns amount for which sold, with costs and expenses of keeping during time allowed for redemption. Such purchaser shall deliver property to person so redeeming and execute release to him, and, if notice of intention to redeem be given at or before sale, person selling shall retain possession during such time, unless sooner redeemed. *Ibid.*, § 3472.

Mortgagee, representatives or assigns may fairly and in good faith purchase any property so sold, when sale conducted by sheriff, deputy, or any constable of county. *Ibid.*, § 3473.

Interest of mortgagor or assigns in such property may be subjected to garnishment, attachment, or execution, and when levied upon officer may take it into possession; but he or creditor shall forthwith cause written demand to be served upon owner of mortgage or agent for statement of amount remaining due. Within three days thereafter such owner shall furnish verified statement of original amount secured, rate of interest, amount and date of all payments, balance then due, and all costs and expenses incurred. Such creditor, within twenty-four hours after receipt of such statement, shall pay to person entitled thereto amount then due, and in default thereof his levy shall be released and property returned; but upon payment of such amount creditor shall be subrogated to all the rights of the owner of mortgage, and entitled to the evidence of the indebtedness secured thereby. If mortgage debt not then due, and owner refuse to receive payment, with interest to date, property may be held under levy and sold subject to mortgage lien. But if creditor desires to contest validity or amount of mortgage he shall deliver to said officer, within said twenty-four hours, his affidavit, or that of his agent or attorney, that affiant believes mortgage is invalid or illegal, or amount claimed thereunder is in excess of sum then due, upon receipt whereof officer shall retain property. And in any case he shall hold it for said twenty-four hours after receipt of such statement, to allow creditor to make such affidavit. Nothing herein shall preclude mortgagee from asserting his rights under mortgage in any independent proceeding. *Ibid.*, § 3474.

Any provision in mortgage on crops which by its terms shall mortgage or convey any crop to be grown later than during season beginning May 1 next following date thereof shall be void, except when mortgage given to secure part or all of purchase price or rent of land upon which such crop is to be grown, but such provision shall not affect validity of any other stipulation or provision of mortgage. *Ibid.*, § 3475.

Every promissory note or contract of sale, conditioned that the title to the property for or on account of which same was given shall remain in vendor, shall be void as to creditors of vendee and subsequent purchasers and

mortgagees in good faith, unless note or contract or copy or, if contract oral, a memorandum, signed by purchaser and expressing its terms and conditions, be filed as in case of chattel mortgage. *Ibid.*, § 3476.

Every note or other evidence of indebtedness or contract so filed is full and sufficient notice to all parties interested of existence and conditions thereof, but shall cease to be notice against creditors of vendee and subsequent purchasers and mortgagees in good faith after expiration of six years from day on which same or last instalment of sum secured thereby becomes due. *Ibid.*, § 3477, as amended by Laws 1905, chap. 178, § 1 (Supplement 1909, p. 822).

When any such contract fully performed on part of vendee, the vendor, representatives or assigns shall give duplicate satisfactions, one of which he shall deliver to person entitled thereto, and the other he shall file, at his own expense, with officer having custody of instrument so satisfied, who shall thereupon deliver up the note, contract, memorandum, or copy to which the satisfaction relates. Such satisfaction need not be witnessed or acknowledged. Revised Laws of 1905, § 3478.

To secure loan or purchase of seed grain, person receiving same shall execute to vendor or lender, note or contract containing statement of amount and kind of seed, and terms of agreement relative thereto. Upon filing same or copy, as hereinafter provided, vendor or lender shall have lien on crop grown therefrom. *Ibid.*, § 3479.

To preserve said lien, person furnishing seed, within thirty days after execution of note or contract, shall file same, or copy, with clerk of town or municipality where land upon which crop is to be grown is situated. Thereupon lien shall continue for term of one year from date of filing upon crop growing or grown from such seed, to the amount and according to terms of agreement, against owner and all creditors and purchasers. It shall not be affected by any exemption law, and shall take precedence of all other liens and be notice of its existence to all persons. *Ibid.*, § 3480.

Owner of such note or agreement and lien, at any time after condition broken, may take possession of crop so grown, or so much as he may be entitled to under terms of agreement, including necessary expense of taking and sale, and such taking shall discharge lien as to remainder of crop. *Ibid.*, § 3481.

All above provisions relating to chattel mortgages, not inconsistent with those relating to conditional sales and seed grain contracts, shall be applicable thereto, but neither shall require witnessing or acknowledgment. *Ibid.*, § 3482.

Every person who, with intent to place mortgaged personal property beyond reach of mortgagee or his assigns, shall remove or conceal, or aid or abet in removing or concealing any such property, and any mortgagor of such property who shall assent to or knowingly suffer such removal or concealment, or, at any time before debt secured by chattel mortgage has been fully paid, shall sell, convey, or in any manner dispose of personal property so mortgaged, or any part thereof, without written consent of mortgagee or assigns, or without informing person to whom he shall sell, convey, or dispose of same that it is mortgaged, and the true amount then due on debt secured by such mortgage, shall be punished by imprisonment or fine. *Ibid.*, § 5109.

Telegraph and telephone companies may mortgage or execute deeds of trust of the whole or part of property and franchises to secure money borrowed by them for construction and equipment of their lines and properties, and other corporate purposes, and issue their corporate bonds in sums of not less than five hundred dollars, secured by such mortgages or deeds, and, if payable to bearer, negotiable by delivery, bearing interest at rate not exceeding six per cent per annum, and convertible into stock or not as may be deemed expedient, may sell them at such prices as they deem proper. Such mortgages or trust deeds may by their terms include after acquired property, real and personal, and shall be as valid and effectual for that

purpose as if property was in possession at time of execution thereof. *Ibid.*, § 2902.

In contract for purchase and sale of railroad equipment or rolling stock, whether deliverable at once or at future stated times, by terms of which the purchase money is to be paid wholly or partly after such delivery, it may be agreed that the title shall not pass to vendee until purchase price fully paid, or that the vendor shall have lien for unpaid purchase money, notwithstanding delivery thereof, but the term of credit for purchase money shall not exceed ten years from execution of contract. *Ibid.*, § 2903.

In contract for leasing of railroad equipment or rolling stock, parties may stipulate that there be a conditional sale at termination of lease, that the rentals as paid or when paid in full may be treated as purchase money, and that the title shall not vest in lessee or vendee until purchase money fully paid, subject, however, to proviso in § 2903. *Ibid.*, § 2904.

Every such contract shall be acknowledged by vendee or lessee as in case of conveyance of land, and filed for record with secretary of state and register of deeds of county where, at time of its execution, principal office or place of business of vendee or lessee is situated in this state. Each locomotive, engine or car so sold or leased shall have name of vendor or lessor plainly marked on each side, or be otherwise so marked as to indicate the ownership thereof. And upon compliance with this section, such contract shall be valid and effectual, both in law and equity, against all purchasers and creditors. *Ibid.*, § 2905.

Such mortgages or deeds of trust shall be recorded with secretary of state, and also in office of register of deeds of each county through which the telegraph or telephone line runs, or in which it may hold land. To secure the rights of all parties interested under such deeds and mortgages so executed and recorded, the personal property belonging or appertaining thereto shall be deemed a part of the line, and the record of such deeds and mortgages shall be notice of the rights of all parties in the real and personal property covered thereby. *Ibid.*, § 2906.

Any person owning or operating a threshing machine shall have lien upon grain threshed therewith for price or value of such service, which shall be preferred to all other liens or incumbrances except those given for seed from which grain grown. Within ten days after such threshing is completed, the claimant of such lien shall file with clerk of town where it was done, verified statement of amounts and kinds of grain threshed, time and place of doing same, giving first and last days thereof, rates per bushel and total charge therefor, amounts paid thereon, if any, and balance due, name of reputed owner and of person requesting work to be done, and notice that a lien is claimed for amount remaining unpaid. A certified copy of such statement shall authorize seizure and sale of so much of the grain covered by lien as may be necessary to satisfy same, with reasonable costs and expenses; but such seizure must be made, or an action to foreclose be commenced, within six months after such filing. So far as applicable thereto, laws relating to enforcement of chattel mortgages shall govern foreclosure of liens hereunder. Any person secreting or disposing of property covered by such lien, without consent of lien holder, shall be guilty of misdemeanor. *Ibid.*, §§ 3546, 3547.

Actions for the foreclosure of mortgages shall be governed by the same rules and provisions of statute as civil actions, except as in this chapter (chapter 83) otherwise provided. *Ibid.*, § 4486.

558. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____, county of _____, state of Minnesota, party of the first part, being justly indebted to _____, party of the second part, in the sum of _____ dollars, which is hereby confessed and acknowledged, ha _____ for the purpose of securing the pay-

ment of said debt, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said party of the second part and his assigns, all that certain personal property described as follows, to wit: [*description*] All the said property being now in the possession of said first party, in the _____ of _____, in the county of _____, and state aforesaid, and free from all incumbrance .

TO HAVE AND TO HOLD, ALL AND SINGULAR, the personal property aforesaid, forever, provided, always, and these presents are upon this express condition: That if the said party of the first part shall pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the sum of _____ dollars, according to the conditions of _____ certain promissory note payable to _____, viz: \$ _____, dated _____, due _____, with interest at _____ per cent. per annum until paid; \$ _____, dated _____, due _____, with interest at _____ per cent. per annum until paid. Then these presents to be void and of no effect. But if default shall be made in the payment of said sum of money, or the interest thereon at the time the said note shall become due, or if any attempt shall be made to remove, dispose of or injure said property or any part thereof, by the said party of the first part, or any other person, or if the said party of the first part does not take proper care of said property, or if said party of the second part shall at any time deem himself insecure; then, thereupon and thereafter it shall be lawful, and the said first party hereby authorizes said second party, his executors, administrators or assigns, or his authorized agent, to take said property, wherever the same may be found, and hold or sell and dispose of the same and all equity of redemption, at public auction, with notice as provided by law, and on such terms as said party of the second part or his agent may see fit, and said party of the second part may become the purchaser of said property at said sale, retaining such amount as shall pay the aforesaid note and interest thereon and an attorney's fee of ten dollars, and such other expenses as may have been incurred, returning the surplus money, if any there may be, to the said party of the first part, or his assigns. And as long as the conditions of this mortgage are fulfilled, the said first party to remain in peaceful possession of said property, and in consideration thereof he agrees to keep said property in as good condition as it now is, at said first party's cost and expense.

IN TESTIMONY WHEREOF, the said part _____ of the first part ha hereunto set hand and seal this _____ day of _____, A. D. 19 _____.

[*Signature.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

559. Affidavit to Renew Chattel Mortgage.

STATE OF MINNESOTA, }
County of _____, } ss.

_____, of said county, being duly sworn, says that he is _____, named in and now the holder of a certain chattel mortgage made by _____, to _____, which mortgage bears date the _____ day of _____, A. D. 19 _____, and was on the day of _____, A. D. 19 _____, duly filed in the office of the _____, in and

for the of , in said county of , and state of Minnesota; that the sum of dollars is now remaining unpaid upon and secured by said mortgage, which sum constitutes the extent of the interest of said in, and lien upon the property therein mentioned, by virtue of such mortgage.

[Signature.]

Subscribed and sworn to before me, this

day of , A. D. 19 .

[Signature.]

MISSISSIPPI.

All bargains and sales and all deeds of trust and mortgages whatsoever shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or proved and lodged with the clerk of the chancery court of the proper county, to be recorded in same manner as other conveyances are required to be acknowledged or proved and recorded and otherwise to be binding between the parties. Code of 1906, § 2787.

All such instruments as to all subsequent purchasers for a valuable consideration without notice and as to all creditors shall take effect only from the time when delivered to the clerk to be recorded. *Ibid.*, § 2588.

Record to be made in office of clerk of chancery court of county in which property shall remain and if, afterwards, the person claiming title under such writing shall permit any other person in whose possession the property may be to remove the same or any part thereof out of county in which the writing is recorded, and shall not within twelve months after such removal cause the writing to be duly certified to county into which the property may be removed, and to be delivered to clerk of chancery court to be recorded, the writing, for so long as it remains without being recorded or delivered for record in the last mentioned county, and for so much of the property as may have been removed, shall be void as to all purchasers for a valuable consideration without notice and as to all creditors. *Ibid.*, § 2785.

Mortgages, deeds of trust and other liens on personal property executed out of this state shall only be binding on such property in or when removed into this state as against creditors and bona fide purchasers without notice from the time such paper, duly acknowledged or proved, or a duly certified copy of record thereof shall be delivered to proper clerk in this state for record. *Ibid.*, § 2797.

MISSOURI.

No mortgage or deed of trust of personal property shall be valid against any other person than the parties, unless possession be delivered to and retained by mortgagee or trustee or cestui que trust, or unless acknowledged or proved and recorded in county where mortgagor or grantor resides, in same manner as conveyances of land, or unless mortgage or deed of trust or copy filed in office of recorder of deeds of county where mortgagor or grantor executing same resides, and in case of city of St. Louis, with recorder of deeds for said city, or, where such grantor is a non-resident of state, then in office of recorder of deeds of county or city where the property mortgaged was situated at time of executing such mortgage or deed of trust; and such mortgage or deed of trust or copy may be so filed, although not acknowledged, and shall be as valid as though fully spread upon the records of county, or, in case of city of St. Louis, upon the records of said city, in office of recorder of deeds; and such instrument, when acknowledged and recorded, or when the same or a copy shall have been filed, as above provided, shall thenceforth be notice of the contents thereof to all the world. Annotated Statutes 1906, § 3404.

Nothing contained in preceding section shall avoid or defeat contract of bottomry, respondentia, nor any transfer or assignment or hypothecation

of any boat, vessel, ship or goods, at sea or abroad, if mortgagee, trustee or cestui que trust shall take possession as soon as may be after arrival thereof within state. *Ibid.*, § 3405.

Such mortgage or deed of trust, when satisfied, shall be discharged by any of the following methods: I. By mortgagee, cestui que trust, his agent or assigns, on margin of index, attested by recorder. II. Upon presentation by mortgagor or grantor of original mortgage or deed of trust and his making affidavit before recorder that the instrument presented by him is original of copy on file and that the mortgage or deed of trust has been fully paid and satisfied. III. Upon presentation or receipt of order in writing signed by mortgagee or cestui que trust, attested by justice of peace or notary public, stating such instrument paid and satisfied. All fees for release of mortgage or deed of trust shall be paid by mortgagor. When chattel mortgage satisfied as above provided, recorder may deliver it to holder of note secured thereby, or, if holder of said note refuse to receive same, recorder may destroy said mortgage. *Ibid.*, § 3406.

Every such mortgage or deed of trust, where original or copy filed, as herein provided, shall cease to be valid against mortgagor or person making same or subsequent purchasers or mortgagees in good faith, after expiration of five years from filing. *Ibid.*, § 3407.

Every person obtaining possession of personal property covered by mortgage or deed of trust, who shall wilfully deface, mutilate or obliterate, or cause the same to be done, any marks, numbers, designs, or names, by which such property was intended to be identified, shall be guilty of misdemeanor, and, upon conviction, be subject to penalties provided by law against mortgagor for fraudulent disposition of mortgaged personal property. *Ibid.*, § 3409.

Every sale by vendor of goods and chattels in his possession or under his control, unless accompanied by delivery in reasonable time, regard being had to situation of property, and followed by continued change of possession, shall be held fraudulent and void against creditors of vendor or subsequent purchasers in good faith, and no sale of goods and chattels, where possession delivered to vendee, shall be subject to any condition as against creditors of vendee, or subsequent purchasers from vendee in good faith, unless such condition shall be evidenced by writing, executed and acknowledged by vendee, and recorded as in cases of mortgages of personal property. *Ibid.*, § 3410.

In all cases where any personal property is sold to any person, to be paid for in whole or in part in installments, or is leased, rented, hired or delivered to another on condition that the same shall belong to person purchasing, leasing, renting, hiring or receiving same whenever amount paid shall be a certain sum or the value of such property, title to same to remain to vendor, lessor, renter, hirer or deliverer of same, until such sum or the value of such property or any part thereof is paid, such condition, in regard to title so remaining until such payment, shall be void as to subsequent purchasers in good faith and creditors, unless such condition is evidenced by writing executed, acknowledged and recorded as in cases of chattel mortgages. *Ibid.*, § 3412.

When such property is so sold or leased, rented, hired or delivered, it shall be unlawful for vendor, lessor, renter, hirer or deliverer, or his or their agent or servant, to take possession without tendering or refunding to purchaser, lessee, renter or hirer, or any party receiving same, the sum or sums so paid, after deducting a reasonable compensation for use of property, which shall in no case exceed twenty-five per cent of amount so paid, anything in contract to contrary notwithstanding, and whether such condition be expressed in such contract or not, unless property broken or actually damaged, and then reasonable compensation for such breakage or damage shall be allowed. *Ibid.*, § 3413.

In actions for enforcement of liens upon personal property mortgaged to secure indebtedness, or to maintain or secure possession of the property, or

in any other case where validity of such lien is drawn in question, proof upon the trial that the party holding or claiming to hold such lien has received or exacted usurious interest for such indebtedness shall render mortgage of personal property or any lien thereon given to secure such indebtedness invalid and illegal. *Ibid.*, § 3710.

All mortgagees of real estate or personal estate, including leasehold interests, when debt or damages secured amounts to fifty dollars or more, may file petition in office of circuit court against mortgagor and the actual tenants or occupiers of such real estate, or persons in possession of personal property, setting forth substance of mortgage deed, and praying that judgment may be rendered for debt or damages, and that the equity of redemption may be foreclosed, and the mortgaged property sold to satisfy amount due. *Ibid.*, § 4342.

Deeds of trust in nature of mortgages may, at option of *cestuis que trust*, their executors, administrators or assigns, be foreclosed by them, and property sold in same manner in all respects as in case of mortgages. *Ibid.*, § 4343.

If part of the property be real estate, petition may be filed in any county where any part of mortgaged premises is situated; if it be exclusively personal estate, it may be filed and proceeded with as in other civil actions. *Ibid.*, § 4345.

In case of death of mortgagee or assignee or of mortgagor, whether before or after action brought, personal representative of deceased party shall be made plaintiff or defendant, as case may require. *Ibid.*, § 4346.

When personal representative of mortgagor has been duly summoned or appears to the action, judgment, if for plaintiff, shall be as before directed; and if, in such case, mortgaged property insufficient to satisfy debt and damages, or damages and costs, judgment, as to residue, shall have effect of judgment against executor or administrator, as such. *Ibid.*, § 4347.

The issue, service and return of summons and execution and all proceedings under this chapter (Chap. 52) shall be subject to and governed by law regulating proceedings in civil suits, except as otherwise herein provided. *Ibid.*, § 4348.

Any person claiming interest in mortgaged property may, on motion, be made defendant to any such proceedings, and may answer in avoidance or bar of the deed, or debt or damages, and issue shall be made and tried as in other civil suits. *Ibid.*, § 4349.

When mortgagor is not summoned but notified by publication, and has not appeared, judgment, if for plaintiff, shall be that he recover debt and damages, or damages found to be due, and costs, to be levied of mortgaged property, describing as in mortgage. *Ibid.*, § 4350.

When mortgagor duly summoned or appears to the action, judgment, if for plaintiff, shall be as in preceding section specified, with the addition that, if mortgaged property not sufficient to satisfy debt and damages, or damages and costs, residue to be levied of other goods, chattels, lands and tenements of mortgagor. *Ibid.*, § 4351.

Execution to be issued shall be a special *feri facias*, in accordance with judgment, and shall be executed and returned as executions in ordinary civil suits. *Ibid.*, § 4352.

Purchaser under sale by virtue of execution on judgment rendered in pursuance of provisions of this chapter (Chap. 52) shall take title as against parties to suit, but cannot set it up against subsisting equities of those not parties thereto. *Ibid.*, § 4353.

In mortgages in which personal estate alone conveyed, and the debt secured thereby, exclusive of interest, does not exceed one hundred dollars, mortgagee or personal representatives, upon default in payment of mortgage debt by mortgagor or legal representatives, may sell the mortgaged property or so much thereof as will satisfy his debt, giving mortgagor, after default in payment of debt, sixty days' previous notice, in writing, that the property will be sold, unless debt secured by it is paid, and giving thirty

days' notice of time and place of sale; notice to be published in same manner as sheriff's notice of sale of real estate. *Ibid.*, § 4354.

All mortgages of real or personal property, or both, with powers of sale in mortgagee, and all sales made by mortgagee, or personal representatives, in pursuance of provisions of such mortgage, are valid and binding upon mortgagors and all persons claiming under them, and shall forever foreclose all right and equity of redemption of property sold; but this shall not affect rights of tenant to growing and unharvested crops on lands foreclosed, to extent of interest of such tenant under terms of contract or lease between tenant and mortgagor or personal representatives. *Ibid.*, § 4355.

Provisions as to satisfaction and release. *Ibid.*, §§ 4358-4368.

No foreign corporation or individual shall act as trustee in deed of trust or other conveyance made by any person, firm or corporation, whereby property, real or personal, situate or being in state is conveyed in trust for any purpose, unless in such conveyance there shall be named as co-trustee a corporation organized under laws of state and having power to act as trustee and execute trusts, or an individual citizen of state of Missouri. No suit shall be brought to foreclose any such deed of trust, unless resident trustee a party plaintiff. *Ibid.*, § 4372.

Mortgagor or grantor in chattel mortgage or trust deed of personal property who shall sell, convey or dispose of the property or any of it, without written consent of mortgagee or beneficiary, and without informing person to whom sold or conveyed that the property is mortgaged or conveyed by such deed of trust, or who shall injure or destroy property or part thereof, or aid or abet the same, for purpose of defrauding mortgagee, trustee or beneficiary or heirs or assigns, or shall remove or conceal, or aid or abet in removing or concealing it or part of it, with intent to hinder, delay or defraud such mortgagee, trustee or beneficiary, heirs or assigns, shall, if property of value of fifty dollars or more, be guilty of felony, and if of a less value than fifty dollars, of a misdemeanor. *Ibid.*, § 1933.

When any person, persons, partnership, corporation or corporations or joint stock company shall lend any sum, not exceeding five hundred dollars, and take mortgage, deed of trust or other instrument of writing, upon household or kitchen furniture, sewing machines, wearing apparel, musical instruments, watches or jewelry, to secure repayment, and shall contract for, exact or receive, directly or indirectly, as interest or for use of the money loaned, any sum of money or other thing of value in excess of one per cent. per month on amount loaned, or shall accept or receive note, bond, bill or other evidence of debt for or on account of such loan, or as inducement thereto, which shall express on its face a sum to be due or payable in excess of actual amount so loaned, such bond, bill, note or other evidence of debt, together with mortgage, deed of trust or other instrument of writing, to secure same upon such chattels, shall be void and non-enforceable; and any payee or any other person with knowledge thereof, who shall sell, assign, transfer or deliver to any person for good or valuable consideration any such bond, bill, note or other evidence of debt which shall express on its face a sum due or payable in excess of actual loan or who shall transfer any mortgage, deed of trust or other instrument of writing, to secure same upon such chattels, without stating to such vendee, assignee or transferee the true amount actually loaned, shall be liable to purchaser thereof for double the amount named in such bond, bill, note or other evidence of debt, to be recovered in action at law, and, in addition thereto, he or they shall be guilty of misdemeanor. *Ibid.*, § 1934.

In any contract for sale of railroad or street railway equipment, or rolling stock, it may be agreed that the title to property sold or contracted to be sold, although possession may be delivered immediately or subsequently, shall not vest in purchaser until purchase money paid, or that the seller shall have lien for unpaid purchase money; and in any contract for leasing or hiring of such property, it may be stipulated that there be a conditional sale at termination of contract, and rentals or amounts to be received under

contract may, as paid, be treated as purchase money, and title shall not vest in lessee or bailee till purchase price paid and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract shall be valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless, first, it is evidenced by instrument executed by parties and acknowledged by vendee or lessee or bailee or duly proved like a deed; and, second, it is filed for record in office of secretary of state; and, third, each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by word "owner" or "lessor" or "bailor," as case may be, which mark or marks shall be effaced immediately upon payment or satisfaction of indebtedness or incumbrance thereon; and every corporation, person or persons, failing, neglecting or refusing to comply with this provision, shall forfeit and pay for such failure, neglect or refusal the sum of five dollars for every day the same shall be continued, for each piece of property so marked, to be sued for and recovered in name of people of state, by attorney-general, in any court of cognizance thereof, to be paid into state treasury. The contracts shall be recorded in book of records to be kept for that purpose, and on payment of purchase money and performance of terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by vendor, lessor, or bailor, or assignee, on margin of record of contract, duly attested, or by separate instrument, acknowledged by vendor, lessor, or bailor or assignee, and recorded as aforesaid. Sections 3410, 3412, and 3413 shall not apply to these contracts. *Ibid.*, §§ 1182, 1183, 1185.

560. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____ of _____, state of Missouri, in consideration of the debt hereinafter mentioned and created, and the sum of one dollar to _____ paid, by _____ of _____, the receipt of which is hereby acknowledged, do sell and convey to _____ the goods and chattels now in _____, in the _____ of _____, state of Missouri, to wit: [description] warranted free from incumbrances, and against any adverse claims:

UPON CONDITION, that if _____ pay said _____ or assigns promissory note of this date, for the sum of _____, then this conveyance shall be void; otherwise it shall remain in full force and effect. Said property may remain in _____ possession, but in case of failure to pay the installments of said note as they become due respectively; or in case said mortgagee or assigns should at any time deem _____ insecure, said mortgagee or assigns may take possession of said property and sell the same at public auction to the highest bidder for cash, at _____, in the _____ of _____, of _____, and state of Missouri, having first given _____ days' public notice of the time, terms and place of sale, and property to be sold, by _____, and out of the proceeds pay said debt and all costs and expenses, and to _____ the balance.

At said sale said mortgagee or assigns may purchase said property.

WITNESS, _____ hand and seal this _____ day of _____, 19 _____.

[Signatures and seals.]

STATE OF MISSOURI, }
of . }

, being duly sworn, on oath says, that the legal and absolute owner of the personal property above described, and that the same is free from all claims and liens whatsoever.

[Signatures.]

Subscribed and sworn to before me,
this day of , 19 .

[Signature.]

561. Deed of Trust and Chattel Mortgage.

THIS DEED, made and entered into this day of , 19 , by and between , of the city of , county of and state of , party of the first part, , of the city of , county of and state of , party of the second part, and , of the city of , county of and state of , party of the third part:

WITNESSETH, that the said party of the first part, in consideration of the sum of one dollar to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, and of the debt and trust hereinafter created, does by these presents grant, bargain, sell and convey unto the said party of the second part the following described personal property and effects, to wit: [description].

TO HAVE AND TO HOLD unto the said party of the second part and his successors in this trust forever. *In Trust, However*, for the following purposes, to wit: Whereas, the said party of the first part has this day made and delivered unto the said , party of the third part, his certain negotiable promissory note, of even date herewith, for the sum of dollars, for value received, payable months after date, to the order of said , with interest at the rate of per cent. per annum from . Now if said note shall be well and truly paid, when due and payable, then this deed shall be void and of no effect, and shall be released at the expense of the said party of the first part. But if said note , or any part thereof, shall not be paid when due, according to the true effect and tenor thereof, then this deed shall remain in full force; and the said party of the second part, or his successor (or in case of his death, absence from the State, or refusal or disability to act, the sheriff of the county of), shall, at the request of the holder of said note , take possession of the property herein conveyed and described, and for that purpose authority is given to enter upon the premises of the said party of the first part, or any other place where the property may at the time be, and proceed to sell the same at public vendue to the highest bidder for cash, at , first giving days' notice of the time, place and terms of sale, in some newspaper printed at the city of , county of , and state of , and out of the proceeds he shall pay: first, the costs and expenses of executing this trust, including reasonable compensation to said trustee for his services; second, the amount or amounts, both principal and interest, that remain due and unpaid of said note , and the remainder, if any, he shall

pay over to the said party of the first part, or his legal representatives or assigns.

And until default be made, as aforesaid, said party of the first part shall retain possession of the aforesaid property, with full enjoyment of the same; but said property shall not be removed from the place where it now is without the consent in writing of said third party.

IN WITNESS WHEREOF, said party of the first part has hereunto set his hand the day and year first above written.

MONTANA.

Chattel mortgage is void against creditors and subsequent purchasers and incumbrancers in good faith for value, unless possession delivered to and retained by mortgagee, or mortgage provide that the property may remain in possession of mortgagor and be accompanied by affidavit of all parties thereto, or, in case any party is absent from city or township where mortgage is executed, at the time of execution thereof, an affidavit of those present and of agent or attorney in fact of absent party, that same made in good faith, to secure amount named and without design to hinder, delay or defraud creditors, and be acknowledged and filed as hereinafter provided. Revised Codes of 1907, § 5758 (Civil Code, § 3861).

Subject to provisions of next preceding section, one member of firm of general partners may alone execute chattel mortgage and make the affidavit on behalf of firm, and mortgage so executed and affidavit so made are as valid as if executed and made by all the partners or their agent or attorney in fact. In case of corporation, president, secretary or managing agent may make affidavit on its behalf. *Ibid.*, § 5759.

Every chattel mortgage shall be acknowledged by mortgagor or person executing same, like conveyance of real property. The form of such mortgage may be substantially the same as prescribed in § 5748. *Ibid.*, § 5760.

562. Chattel Mortgage, Statutory Form.

" This mortgage, made the _____ day of _____, in the year _____, by A. B., of _____, mortgagor, to C. D., of _____, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [*here describe the property*], as security for the payment to him of _____ dollars, on [*or, before*] the _____ day of _____, in the year _____, with interest thereon [*or, as security for the payment of an obligation, describing it, etc.*] A. B."

Ibid., § 5748.

Every chattel mortgage, with affidavit of parties, or copy, certified by county clerk or person before whom acknowledged, must be filed in office of county clerk of county where mortgagor resides, or, if not a resident of state, then in office of county clerk where property is at time mortgage executed; and county clerk must, on receipt of mortgage or copy, indorse thereon time of receiving same, and file and keep same in his office for inspection of all persons, and shall enter in book properly ruled and kept for that purpose, names of all the parties, names of mortgagors to be alphabetically arranged, the consideration thereof, date of maturity, and time of filing. *Ibid.*, § 5761.

Every chattel mortgage, made, acknowledged and filed, as provided by laws of State, is thereupon, if made in good faith, good and valid against creditors of mortgagor or subsequent purchaser, or incumbrancers, from time so filed until maturity of entire debt or obligation secured thereby and for period of sixty days thereafter. The entire period of time such mortgages are valid

and binding against creditors and subsequent purchasers and incumbrancers must not exceed one year and sixty days, except by a compliance with provisions of next section. *Ibid.*, § 5762.

Every chattel mortgage made, acknowledged and filed as provided by laws of State, may be renewed at any time within sixty days after maturity of debt or obligation secured, in case such debt or obligation or any part thereof, be unpaid or unfulfilled, by filing an affidavit showing date of mortgage, name of mortgagor and mortgagee, date of filing same, amount of debt or obligation secured, amount of debt justly owing at time of filing such affidavit, or the conditions of the obligations unfulfilled, and that the debt or obligation was neither made nor renewed to hinder, delay or defraud creditors or subsequent incumbrancers; which affidavit must be subscribed and sworn to by mortgagee or his assignee. In case of absence of mortgagee or assignee from city or township where affidavit executed, it may be made by agent or attorney in fact of mortgagee or assignee. It must be made before officer authorized to administer oaths, filed in office where mortgage filed, and thereupon county clerk of such county must attach such affidavit to mortgage and note date of filing thereof opposite entry of mortgage, in book provided for entry of chattel mortgages; and the original mortgage shall then continue to be in full force and virtue for period of one year after expiration of term for which originally given; and a like affidavit may be filed within sixty days after expiration of said period of one year last aforesaid, and original mortgage shall then continue in full force for period of one year and in addition to the first year's renewal, and under same conditions and within same limitations a like affidavit may be filed to renew the mortgage for each succeeding year thereafter until debt secured fully paid; but if debt for which any mortgage is security, is payable in two or more installments any one or more of which are to become due and payable after one year from date thereof, then in such event the affidavit of extension of such mortgage must be made and filed within sixty days after first installment of said debt falls due, whether such installment be paid or not, and must be made and filed within sixty days after each subsequent installment falls due whether same be paid or not, until entire debt secured fully paid; provided such installments shall become due and payable not more than one year apart, and the first of said installments shall fall due not more than one year from date of mortgage. *Ibid.*, § 5763.

Filing of affidavit provided in the next preceding section shall not extend time of maturity of any debt or execution of an obligation secured by such mortgage, but same may be enforced according to the conditions thereof, and mortgage foreclosed according to law, at any time within period for which mortgage so renewed, unless agreement be made between mortgagee and mortgagor extending time of payment of such debt or fulfillment of such obligation to time stated in such affidavit. *Ibid.*, § 5764.

Any subsequent mortgagee of personal property, upon which prior mortgage exists, which has been extended or renewed as provided in § 5763, may, at any time during existence of such mortgage, pay amount of debt and interest owing and secured, as shown by such affidavit and mortgage, or deposit full amount thereof with county clerk of county where affidavit and mortgage filed, subject to order of mortgagee, legal representatives or assigns, and receipt or duplicate receipt for such payment or deposit shall be filed in said office and attached to mortgage, and thereby such subsequent mortgagee shall be subrogated to all rights of prior mortgagee under such mortgage. *Ibid.*, § 5765.

Personal property mortgaged may be taken on attachment or execution issued at suit of creditor of mortgagor, but, before property so taken, officer must pay or tender to mortgagee, amount of mortgage debt and interest, or must deposit amount thereof with county treasurer of county where mortgage filed, payable to order of mortgagee. *Ibid.*, § 5766.

Certified copy of chattel mortgage, made, acknowledged and filed as above provided, may be read in evidence in any court of state, without further proof of execution of original, if original lost or out of power of person wishing to use it. *Ibid.*, § 5767.

The foregoing sections shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have effect of a mortgage or lien upon such property. *Ibid.*, § 5768.

Action for foreclosure of mortgage of personal property, or enforcement of any lien thereon, may be commenced and conducted in same manner as provided by law for foreclosure of mortgages and liens upon real property, and the same may be joined in action for recovery of possession of the property mortgaged; but the mortgagor of personal property may insert in his mortgage a clause authorizing sheriff of county where property, or any part thereof, may be, to execute power of sale therein granted to mortgagee, legal representatives or assigns, in which case sheriff of such county, at time of default, at request of mortgagee, must advertise and sell whole or any part of the mortgaged property, wherever it may be, in manner provided in mortgage; and, at such sale, so made, mortgagee, or representative or assigns, may, in good faith, purchase property so sold or any part. Sheriff may require indemnity bond from mortgagee or assigns before taking possession of or selling the mortgaged property. *Ibid.*, § 5769.

The Code of Civil Procedure provides the method of taking possession of range stock under mortgage, between the first day of November and the next succeeding fifteenth day of May. *Ibid.*, § 5770.

In all cases where it is necessary under laws of state for party to mortgage, assignment, bill of sale, or other contract, between first day of November and the next succeeding fifteenth day of May, to take possession of any cattle or horses running at large and commonly known as range stock, in order to preserve his rights under such mortgage or other instrument, it is sufficient for him to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with county clerk of county wherein such property is running at large, within five days after it becomes necessary for him to so take custody and possession of same. *Ibid.*, § 6694 (Code of Civil Procedure, § 941).

When the copy of the instrument, with the proper notice appended, is filed as above provided, it has same effect as if actual possession of said cattle and horses had been taken by the party required under said instrument to take the same, and shall continue to have such effect until actual possession of such property has been taken or had by the party aforesaid; provided such actual possession be had or taken prior to the first day of August next succeeding. *Ibid.*, § 6695.

Whenever debt or obligation secured by chattel mortgage, filed in office of county clerk as above provided, shall be paid or discharged, acknowledgment of satisfaction, signed by mortgagee, legal representatives or assigns, must be indorsed upon mortgage or copy, so filed, and fact of discharge or satisfaction noted by county clerk in book kept by him, as provided in § 5761, opposite names of parties to mortgage. *Ibid.*, § 5771 (Civil Code, § 3874).

Mortgagor of chattels who shall, during lien or title created by the mortgage, sell the property, or any part, to third person for valuable consideration, without informing him of existence and effect of such mortgage, shall forfeit to purchaser twice value of property so sold, which forfeiture may be recovered in action of debt, in any court having jurisdiction thereof. *Ibid.*, § 5772.

Lien of mortgage on growing crop continues on crop after severance, whether remaining in original state or converted into another product, so long as same remains on land of mortgagor. *Ibid.*, § 5773.

Mortgagee may foreclose right of redemption of mortgagor in manner prescribed by Code of Civil Procedure. *Ibid.*, § 5741.

Power of sale may be conferred by mortgage upon mortgagee or any other person, to be exercised after breach of obligation for which the mortgage is security. *Ibid.*, § 5742.

Mortgage does not entitle mortgagee to possession, unless authorized by express terms of mortgage; but after execution of mortgage, mortgagor may agree to such change of possession without new consideration. *Ibid.*, § 5737.

Assignment of mortgage may be recorded like a mortgage, and such record is notice to all persons subsequently deriving title to mortgage from assignor. *Ibid.*, § 5744.

When mortgage executed as security for money due, or to become due, on promissory note, bond, or other instrument, designated in mortgage, the record of assignment of mortgage is not, of itself, notice to mortgagee, heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to persons holding such note, bond, or other instrument. *Ibid.*, § 5745.

Assignment of debt secured by mortgage carries with it the security. *Ibid.*, § 5746.

All contracts, notes and instruments for transfer or sale of personal property where title is stipulated to remain in vendor until payment of purchase price, or part thereof, shall be in writing, and original or a true copy certified by the county clerk and recorder shall be filed with county clerk and recorder of county where property is situate. Otherwise any such contract, note or instrument is void as to a purchaser or mortgagee prior to filing. *Ibid.*, § 5092.

Provisions as to satisfaction. *Ibid.*, §§ 5093, 5094.

In all cases, where railroad equipment and rolling stock may have been, or shall be sold, to any person, firm or corporation, to be paid for, in whole or in part, in installments, or shall be leased, rented, hired, or delivered, on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring, or receiving same, and that the title shall remain in vendor, lessor, renter, hirer, or deliverer of same until the agreed upon price, or rent for such property is paid, such condition in regard to title so remaining shall be valid as to subsequent purchasers in good faith and creditors, provided the term during which the installments or rent are to be paid, shall not exceed ten years, and such contract shall be in writing, duly executed, acknowledged, and recorded, as hereafter provided. *Ibid.*, § 4301.

Such contract shall be recorded in office of secretary of state, and in office of county clerk of county where is located the principal office or place of business of vendee or lessee, and on each locomotive or car so sold or leased, name of vendor, or lessor, or assignee, shall be marked, followed by word "Owner" or "Lessor," as the case may be. *Ibid.*, § 4302.

Mortgage of personal property which constitutes equipment, or part thereof, of railroad company, may be recorded as provided in § 4302, and if same is bona fide the lien credited shall be good, for such length of time as therein provided, not exceeding said period of ten years. *Ibid.*, § 4303.

Upon payment of purchase price and performance of terms and conditions stipulated in any such contract, a declaration to that effect shall be made by vendor, or assignee, which declaration may be made on margin of record of contract, attested by secretary of state, or county clerk, as the case may be, or the satisfaction may be made by separate instrument, acknowledged and recorded in offices where original recorded, and thereupon secretary of state and county clerk shall write in margin of record the word "Satisfied," together with date of satisfaction, and the page, and book of record of declaration of satisfaction. *Ibid.*, § 4304.

In any contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that the title to the property sold or contracted to be sold, although possession delivered immediately or subsequently, shall not vest in purchaser until price paid, or that the seller shall have lien for unpaid purchase-money, and in any contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at termination of contract, and rentals or amounts to be received under such contract, may, as paid, be treated as purchase money and that the title shall not vest in lessee or bailee until purchase-price paid and until terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract shall be valid against any subsequent judgment creditor, or any subsequent bona fide purchaser for value without notice unless, first,

it is evidenced by instrument executed by parties and acknowledged by vendee or lessee or bailee, as the case may be, or duly proved, like deeds, and, second, it is filed for record in office of secretary of state of this state and in office of county clerk and recorder in each county of state in which the line of such railroad or street railway company extends, and, third, each locomotive-engine, or car so sold, leased or hired, or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side followed by word "Owner" or "Lessor" or "Bailor," as the case may be. *Ibid.*, § 4305.

Contracts herein authorized shall be recorded by secretary of state in book of records to be kept for that purpose, and on payment in full of purchase-money, and performance of terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by vendor, lessor, or bailor, or assignee, on margin of record of contract, duly attested, or by separate instrument acknowledged by vendor, lessor, or bailor, or assignee, and recorded as aforesaid. *Ibid.*, § 4306.

Any railroad corporation whose line is wholly or partly within state may issue bonds, securities or obligations not exceeding authorized capital stock, and, to secure their payment, may make, execute and deliver such mortgages or deeds of trust upon all or any of its property, income and franchises, as board of directors may determine or direct; and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be a valid lien upon the property, rights and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights and franchises owned or possessed by corporation at time of execution, irrespective of law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held and enforced in same manner as mortgages of real estate; and the record thereof in office of secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it shall be duty of secretary to record in his office any such mortgage or deed of trust, when presented for that purpose. *Ibid.*, § 4294.

Every person who, after mortgaging any personal property, except locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use and vessels, voluntarily removes, or permits removal of such mortgaged property from county where situated when mortgaged, without written consent of mortgagee, with intent to deprive mortgagee of his claim thereto and interest therein, is guilty of larceny. *Ibid.*, § 8689 (Penal Code).

There is but one action for recovery of debt, or enforcement of any right secured by mortgage upon real estate or personal property. In such action court may, by its judgment, direct sale of encumbered property (or so much as may be necessary), and application of proceeds, and payment of costs of court and expenses of sale, and amount due plaintiff; and if it appear from sheriff's return that the proceeds are insufficient, and a balance still due, judgment can then be docketed for such balance against defendant or defendants personally liable for debt. No person holding a conveyance from or under mortgagor of, property mortgaged, or having lien thereon, which conveyance or lien is not of record in proper office at time of commencement of action, need be made a party; and judgment and proceedings had are as conclusive against party holding such unrecorded conveyance or lien as if he had been made a party to action. *Ibid.*, § 6861 (Code of Civil Procedure, § 1290).

If debt for which the mortgage, lien or incumbrance is held is not all due, as soon as sufficient of the property has been sold to pay amount due, with costs, the sale must cease; and afterward, as often as more becomes due, for principal or interest, court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, whole may be ordered sold in first instance and entire debt and costs paid, there being a rebate of interest where rebate proper. *Ibid.*, § 6863.

When mortgage confers a power of sale, either upon mortgagee or any other person, to be executed after breach of obligation for which the mort-

gage is security, either an action may be maintained as above provided to foreclose, or proceedings may be had under provisions of the mortgage. *Ibid.*, § 6864.

563. Chattel Mortgage.

THIS MORTGAGE, made the day of , A. D. 19 , by , of , in the county of , in the state of Montana, mortgagor , to , of , in the county of , in the state aforesaid, mortgagee ,

WITNESSETH, that the mortgagor mortgage to the mortgagee the following described personal property; to wit [*description*] which said property is now in the . in the county of , and state aforesaid, as security for the payment to said mortgagee of dollars, on the day of , 19 , according to the terms of a promissory note of even date herewith, which is in words and figures following, to wit: [*give copy*]

AND THIS MORTGAGE shall be void if such payment is made according to the terms of said note . But in case default be made in the payment of the principal or interest, as provided in said promissory note , the said mortgagee , executors, administrators, assigns and agents are, or the sheriff of any county in which the above described property, or any part thereof, may be, is hereby empowered and authorized to seize and to sell the said goods and chattels; with all and every of the appurtenances, or any part thereof, in the manner hereinafter prescribed, and out of the money arising from such sale to retain the said principal and interest, together with the costs and charges of making such sale and reasonable attorney's fees and the costs and expenses of obtaining possession of said property, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said mortgagor , heirs or assigns. In case the said power of sale shall be executed by any person, as above authorized, then such sale shall be advertised by such person, by posting notices in three public places in said county at least five days prior to such sale, and such sale must be at public auction to the highest bidder for cash and the mortgagee , heirs or assigns, may become purchaser at said sale.

IT IS FURTHER PROVIDED, that the said mortgagor , heirs or assigns, shall have the right to remain in possession of and carefully use all of the above described property until default be made herein by said mortgagor ; provided expressly, however, that if default be made in the payment of the principal or interest as provided in said promissory note , or if prior to the maturity of said indebtedness, said described property, or any part thereof, shall be attached, seized or levied upon by or at the instance of any creditor or creditors of said mortgagor , or claimed by any other person or persons, or if the said mortgagor , or any other person or persons, shall remove or attempt to remove said property, or any part thereof, from the said county of , or shall conceal, make way with, sell, or in any manner dispose of said described property, or any part thereof, or shall attempt so to do, or if the said mortgagee shall at any time consider the possession of said property, or any part thereof, essential to the security of the payment of said promissory note, or in case the mortgagee or heirs or assigns shall desire that said property be sold under the power of sale herein, then and in such events, or either of such events, the said mortgagee , agent or attorney,

executors, administrators or assigns, or such sheriff shall have the right to the immediate possession of said described property, and the whole or any part thereof, and shall have the right at his option to take and recover such possession, from any person or persons having or claiming the same, with or without suit or process, and for that purpose may enter upon any premises where said property, or any part thereof, may be found, and may at his option regard the debt secured by this mortgage due, and may thereupon proceed and sell such property as above provided and apply the proceeds of sale to the satisfaction of said debt as above provided. The exhibition of said note, with this mortgage, or a copy thereof, shall be sufficient proof that any person claiming to act for the mortgagee is duly made, constituted and appointed agent or attorney, as the case may be, to do whatsoever is herein authorized to be done by or on behalf of the mortgagee , executors, administrators or assigns.

IN WITNESS WHEREOF, the said mortgagor ha hereunto set h
hand and seal , the day and year in this instrument first above written.
[Signatures and seals.]

ACKNOWLEDGMENT.

STATE OF MONTANA, }
County of , } ss.

, being first duly sworn upon his oath says: That he is the mortgagor named in the foregoing chattel mortgage; that said mortgage is made in good faith, to secure the amount named therein, and without any design to hinder, delay or defraud creditors.

[Signature.]

Subscribed and sworn to before me, this day of , 19 .
, Notary Public for the State of Montana.
Residing at .

My commission expires , 19 .

AFFIDAVIT FOR CORPORATION.

STATE OF MONTANA, }
County of , } ss.

, being first duly sworn upon his oath says: That [name of corporation] is a corporation duly organized and existing under and by virtue of the laws of [state or U. S.]; that affiant is the managing agent and the [officer] of said corporation, and makes this affidavit for and in behalf of said corporation; that said corporation is the mortgag named in the foregoing chattel mortgage; that said mortgage is made in good faith to secure the amount named therein, and without any design to hinder, delay or defraud creditors.

[Signature.]

Subscribed and sworn to before me, this day of , 19 .
, Notary Public for the State of Montana.
Residing at .

My commission expires , 19 .

564. Affidavit for Renewal of Chattel Mortgage.

STATE OF MONTANA, }
 County of , } ss.

, being duly sworn, deposes and says:

I. That he is , the mortgagee named in a certain chattel mortgage made and executed by , the mortgagor therein named.

II. That said mortgage bears date upon the day of , A. D. 19 , and the same was filed of record in the office of the county recorder of the county of , and state of Montana, upon the day of , A. D. 19 .

III. That the amount of the debt or obligation secured by said chattel mortgage is the sum of dollars, and that there is now justly owing upon said debt or obligation the sum of dollars.

IV. That the said mortgage is hereby renewed and extended to the day of , 19 .

V. That said debt or obligation neither made or renewed or extended to hinder, delay or defraud the creditors or subsequent incumbrancers of the mortgagor.

[Signature.]

Subscribed and sworn to before me, this
 day of , A. D. 19 .

Notary Public for the State of Montana.
Residing at .

My commission expires .

NEBRASKA.

Every sale by vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, by way of mortgage or security, or upon any condition whatever, unless accompanied by immediate delivery and followed by continued change of possession, of things sold, mortgaged, or assigned, shall be presumed fraudulent and void against creditors of vendor or of person making such assignment, or subsequent purchasers in good faith, and be conclusive evidence of fraud, unless persons claiming under sale or assignment make it appear that the same was made in good faith and without intent to defraud such creditors or purchasers. Annotated Statutes of 1907, § 6030.

Term "creditors," as used in last section, includes all persons who shall be creditors of vendor or assignor at any time while such goods and chattels remain in his possession or control. *Ibid.*, § 6031.

Sections 6030 and 6031 do not apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea, or in foreign ports, or upon waters of a navigable stream, if assignee or mortgagee take possession of vessel or goods as soon as may be after arrival. *Ibid.*, § 6032.

Mortgage or conveyance intended to operate as mortgage of goods and chattels, not accompanied by immediate delivery and followed by continued change of possession, shall be absolutely void against the creditor of mortgagor and subsequent purchasers and mortgagees in good faith, unless mortgage or copy is filed in office of county clerk of county where mortgagor executing same resides, or, if a non-resident of state, then in office of clerk of county where property may be at time of executing, and clerk shall endorse time of receiving same; and it may be so filed, although not acknowledged, and shall be valid, as if spread at large upon records of county; but

any conveyance either by way of mortgage or otherwise, or any sale or transfer of household goods, or any interest therein owned by husband or wife, or by both, and used by them in their dwelling house, or purchased or held by them, or either of them, for use in their family, shall be void unless such conveyance, mortgage, sale or transfer shall be executed and acknowledged by both husband and wife in same manner as conveyances of real estate. *Ibid.*, § 6033.

Such mortgage when satisfied shall be discharged by an entry by mortgagee, agent or assignee, on margin of index, which shall be attested by the clerk without fee; but county clerk may discharge mortgage on presentation or receipt of order in writing, signed by mortgagee and attested by justice of peace or some officer with a seal. Any mortgagee, assignee or their legal personal representatives, after full performance of conditions of mortgage, who for space of ten days after being requested shall refuse or neglect to discharge same as provided in this section, shall be liable to mortgagor, heirs or assigns in sum of fifty dollars damages and also for all actual damages sustained by mortgagor, occasioned by such neglect or refusal. *Ibid.*, § 6034.

Every such mortgage shall cease to be valid against creditors or subsequent purchasers or mortgagees in good faith, after expiration of five years from the filing of the same* copy thereof. *Ibid.*, § 6035.

No sale, contract or lease, wherein transfer of title or ownership of personal property is made to depend on any condition, is valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract or lease without notice, unless same be in writing, signed by vendee or lessee, and copy filed in office of clerk of county where vendee or lessee resides; said copy shall have attached thereto an affidavit of vendor or lessor or agent or attorney, setting forth names of vendor and vendee or lessor and lessee, or description of property transferred and full and true interest of vendor or lessor therein. Such sales and transfers shall cease to be valid against purchasers in good faith or judgment or attaching creditors without notice at expiration of five years, unless such vendor or lessor shall, within thirty days, prior to expiration of the five years from date of such sale or transfer, file copy, verified as aforesaid, in office of said clerk, and said vendor or lessor may preserve validity of said sale or transfer of personal property by an annual refiling in manner aforesaid of such copy. *Ibid.*, § 6045.

County clerk, on presentation, shall file such copy in his office, and index same in same manner as chattel mortgages. *Ibid.*, § 6046.

Where any personal property sold and delivered upon contract of conditional sale, to be paid for in installments, with ownership thereof remaining in vendor as security for payment of purchase price, shall be taken possession of by vendor upon rescinding of contract of sale by him because of default in payment by vendee; and where vendee has paid thereon sum equal to one-third of entire purchase price, such vendor shall at any time within twenty days after taking of such property by him, redeliver same to vendee upon payment by vendee of balance of purchase price, with reasonable cost of taking and keeping same; but, if vendee shall in first instance surrender property to vendor without legal process no costs shall be chargeable to vendee upon redemption of property. *Ibid.*, § 3919.

Upon refusal of any such vendor to redeliver any such property after payment or tender of balance of purchase price and costs according to the preceding section, vendee may thereupon recover from any such vendor whole of purchase money paid on contract of sale. *Ibid.*, § 3920.

Every railroad company may mortgage or execute deeds of trust of whole or any part of their property and franchises, including lands or other property granted to company by United States, to secure money borrowed by them for construction and equipment of their roads. *Ibid.*, § 10636.

* So in original.

Any mortgage or deed of trust made upon lands, road or other property of any railroad company, shall bind and be valid lien upon all the property mentioned in such deed or mortgage, including rolling stock; and purchaser under foreclosure of mortgage or trust deed shall have all the rights of purchaser on execution sale. *Ibid.*, § 10638.

Such mortgages or deeds of trust may by their terms include and cover not only property of companies making them at time of their date, but property both real and personal, thereafter acquired by them, together with all the material and property necessary for use and operation of said road, and shall be as valid and effectual as if property were in possession at time of execution thereof. *Ibid.*, § 10639.

Said mortgages or deeds of trust shall be recorded in office of register of deeds of each organized county through which said road mortgaged or deeded may run in this state, or wherever it may hold lands included in said mortgages or deeds of trust, and shall be notice to all the world of rights of all parties under same, and for this purpose, and to secure rights of mortgagees or parties interested under the deeds of trust so executed and recorded, the rolling stock, personal property, and material necessary for operating the road of said company, belonging to said road, and appertaining thereto, shall be deemed part of the road, and said mortgages and deeds so recorded shall have the same effect both as to notice and otherwise, as to the real estate covered by them. *Ibid.*, § 10640.

Every mortgage of personal property giving to mortgagee or other person a power to sell the property upon default being made in any condition of such mortgage may be foreclosed in the cases and manner hereinafter specified. To entitle any person so to foreclose, it is requisite that default in a condition shall have occurred whereby power to sell became operative, that no suit or proceeding instituted at law to recover debt then remaining secured or any part, or, if instituted, the same has been discontinued, or an execution on judgment rendered thereon returned unsatisfied in whole or part, and that the mortgage duly recorded. Notice that the mortgage will be foreclosed by sale of property or part shall be given by advertisement published in newspaper printed in county where sale to take place, or, if no newspapers printed therein, by posting up notices in at least five public places in said county, two of which shall be in precinct where property to be offered for sale, and such notice shall be given at least twenty days prior to day of sale. Such notice shall specify date of mortgage and where recorded, names of mortgagor and mortgagee and assignee, if any, amount claimed to be due at time of first publication or posting of such notice, a description of property, substantially as in mortgage, and time and place of sale. Such sale may be postponed from time to time by inserting notice of such postponement, as soon as practicable, in newspaper in which the original advertisement published, and continuing such publication until time to which sale postponed; or, if no newspaper published in county where sale to be had, by posting notice of such adjournment in some conspicuous place at place designated in original notice posted for such sale to be had. Such sale shall be at public auction, in day time, between hours of ten a. m. and four p. m., in county where mortgage first recorded, or in any county where property may have been removed by consent of parties, and in which mortgage duly recorded, and in view of property. *Ibid.*, §§ 3900-3905.

Mortgagee, assignee and legal representatives may fairly and in good faith purchase any of the property offered at such sale. *Ibid.*, § 3906.

When mortgage foreclosed as above provided, any and all right of equity of redemption is extinguished. *Ibid.*, § 3907.

Any person who, after having conveyed any article of personal property to another by mortgage, shall, during existence of lien or title created by such mortgage, sell, transfer, or dispose of said personal property or any part, to any person or body corporate, without first procuring consent, in writing, of owner and holder of debt secured by said mortgage, to any such sale, transfer, or disposal, shall be guilty of felony. *Ibid.*, § 3908.

Any person who after having conveyed any article of personal property to another by mortgage, shall, during existence of lien or title created by such mortgage, remove, permit, or cause to be removed, said property or any part out of county where it was situated at time mortgage given, with intent to deprive owner or owners of said mortgage of his security, is guilty of felony. *Ibid.*, § 3909.

565. Chattel Mortgage, Short Form.

KNOW ALL MEN BY THESE PRESENTS, that _____ in consideration of the sum of _____ dollars, in hand paid, do hereby sell and assign unto the following described goods and chattels, belonging to _____ and now in possession, at _____, to wit: [*description*]

THIS GRANT is intended as a security for the payment of _____ promissory note dated _____, 19 _____, and described as follows, to wit: One for _____ dollars, payable _____, 19 _____; one for _____ dollars, payable _____, 19 _____; and one for _____ dollars, payable _____, 19 _____, with interest at the rate of _____ per cent. per annum, which payment, if truly made, will render this conveyance void. In case of default, or if _____ should at any time feel unsafe or insecure, _____ authorize said _____ or agent, to seize and sell the said property, and pay the same, with expenses, costs, and attorney's fees incurred.

SIGNED the _____ day of _____, 19 _____.

[*Signatures.*]

In presence of

[*Signature.*]

THE STATE OF NEBRASKA, }
County, } *ss.*

I, _____, a _____ within and for said county, hereby certify that the foregoing is a true copy of a chattel mortgage this day executed between the within named parties.

WITNESS my hand and _____ seal this _____ day of _____, 19 _____.

[*Signature and seal.*]

566. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____ of the county of _____, and state of _____, in consideration of the sum of _____ dollars, to _____ in hand paid by _____ of _____, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, _____, executors, administrators, and assigns, the following goods and chattels, to wit: [*description*]

TO HAVE AND TO HOLD the same forever; and _____, the said party of the first part, will forever warrant and defend the same against all persons whomsoever. Upon condition, however, that if the said _____ shall pay to the said _____ representatives or assigns, _____ promissory note dated _____, and described as follows, to wit: One for _____ dollars, payable _____, 19 _____; one for _____ dollars, payable _____, 19 _____; and one for _____ dollars, payable _____, 19 _____, with interest at the rate of _____ per cent. per annum,

according to the tenor thereof, then these presents to be void, otherwise in full force.

And _____, the said _____ do hereby covenant and agree to and with the said _____ that in case of default made in the payment of the above mentioned promissory note _____ or in case of my attempting to dispose of or remove from said county of _____ the aforesaid goods and chattels, or any part thereof, or in case the mortgagee shall at any time deem _____ unsafe, then, and in that case, it shall be lawful for the said mortgagee or _____ assigns, by _____ or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being _____ sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due, or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part.

Said sale to take place at _____, in the county of _____, and state of Nebraska, after giving at least _____ days' notice of such sale, by advertisement thereof in some newspaper published in said county. And _____ hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected herewith, and convey absolutely all of _____ right and title therein.

WITNESS my hand this _____ day of _____, 19 _____.

[Signature.]

In presence of

[Signature.]

THE STATE OF NEBRASKA, }
County, } ss.

I, _____, a _____ within and for said county, hereby certify that the foregoing is a true copy of a chattel mortgage this day executed between the within named parties.

WITNESS my hand and _____ seal this _____ day of _____, 19 _____.

[Signature and seal.]

567. Chattel Mortgage — Attorney's Clause.

INDENTURE, made this day of _____, A. D. 19 _____, between _____ of _____ county, Nebraska, party of the first part, and _____ of _____, party of the second part:

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of _____ dollars, on _____ certain promissory note of even date herewith, due _____, signed by _____ and payable to the order of _____.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, for the better securing of the note above described according to the true intent and meaning thereof, and also for and in consideration of the sum of

one dollar, to _____ in hand paid by the said part _____ of the second part at or before the delivery of these presents, the receipt whereof is hereby acknowledged, ha _____ granted, bargained, sold, conveyed, and confirmed, and by these presents do _____ grant, bargain, sell, convey, and confirm unto the said part _____ of the second part, and to _____ executors, administrators, and assigns forever, all the following described goods and chattels, that is to say: [description]

TO HAVE AND TO HOLD all and singular the said property, goods, and chattels unto the said part _____ of the second part and _____ executors, administrators, and assigns, to _____ and their use forever. And _____, the said mortgagor _____, for the purpose of obtaining the money above described, do solemnly declare and represent unto the said mortgagee that _____ lawfully possessed of the said goods and chattels as of _____ own property, and that the same are free and clear of all incumbrance.

PROVIDED, NEVERTHELESS, that if the said mortgagor _____, executors or administrators, shall well and truly pay unto the said mortgagee _____, executors, administrators, or assigns, the said sum of _____ dollars, according to the tenor and effect of said note above described, then this mortgage, as also said note _____, shall both be void, otherwise to be and remain in full force and virtue.

AND PROVIDED FURTHER, that until default be made by said mortgagor _____ in performance of the conditions aforesaid, it shall and may be lawful for _____ to retain the possession of the said goods and chattels, and to use and enjoy the same, and the same shall be at _____ exclusive risk; but if the same, or any part thereof, shall be attached or claimed by any other person or persons at any time before payment, or if any judgment shall be rendered against the said mortgagor _____ during the continuance of said mortgage, or if they may be liable to be taken in execution, or the said mortgagor _____ or any person or persons, upon any pretense whatever, shall attempt to carry off, conceal, make away with, or in any manner dispose of or sell the same, or any part thereof, without the authority and permission of the said mortgagee _____ in writing expressed, then it shall and may be lawful for the said mortgagee _____, with or without assistance, or _____ agent, or attorney, or executor, administrator, or assigns, to take possession of said goods and chattels and property, by entering into any building, or upon any premises wherever the same may be, whether in this county or elsewhere, with or without process of law, to and for the use of the said mortgagee _____ or _____ assigns, and remove and carry away the same; and that on default in paying any of said notes, this conveyance shall become absolute, and all said notes shall thereby immediately become due.

AND PROVIDED FURTHER, that if the said moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done, or performed, at the time and according to the conditions above set forth, or in case of the happening of any of the conditions above mentioned; or if for any cause other than aforesaid, the said mortgagee _____ shall feel _____ sel insecure or unsafe, then the said mortgagee _____, or _____ agent, attorney, or executors, administrators, or assigns, may, by virtue hereof, and without any suit or process, immediately take entire and exclusive possession of all of

said goods, property, chattels, fixtures, etc., and remove the same, if or they so elect, and sell the same at public or private sale, and after satisfying the amount due and interest, and all costs and expenses in and about advertising and making such sale, and ten dollars (\$10.00) attorney fees; the surplus, if any remain, shall be paid over to the said mortgagor or assigns.

AND IT IS FURTHER PROVIDED, that the exhibition of this mortgage shall be sufficient proof and authority for any person or persons claiming to act for the mortgagee, that he or they are duly made, constituted, and appointed, agents or attorneys for or for executors, administrators, or assigns, to do whatever is above authorized, and to receive payment on and to fully satisfy this mortgage.

IN WITNESS WHEREOF, the said mortgagor h hereunto set hand this
day of , A. D. 19 .

[Signature.]

Signed and delivered in the presence of

[Signatures of witnesses.]

NEVADA.

No mortgage of personal property is valid against any other person than the parties, unless possession delivered to and retained by mortgagee, or unless mortgage recorded in office of county recorder of county where property situated, and also in county where mortgagor resides. Mortgage upon personal property, including growing crops, executed, acknowledged and recorded, shall be valid against all third parties without such delivery of possession, but not unless there be appended or annexed thereto the affidavits of mortgagor and mortgagee, or some person in their behalf, setting forth that mortgage is made in good faith and given for debt actually owing from mortgagor, stating amount and character of debt and that same not made to hinder, delay or defraud any creditor of mortgagor. Any personal property so mortgaged may be seized under attachment or execution, and surplus, over and above mortgage debt, secured to any other creditor of mortgagor by serving upon mortgagor and mortgagee, or, in his absence from county upon his or their agent or other person in charge or possession of such personal property, a copy of attachment or execution, or, in case no such person can be found in county in charge or possession thereof, then by filing a copy of writ of attachment or execution in office of county recorder of county where property is situate, with notice endorsed thereon by officer executing same, to the effect that the property is so attached. But possession of the property shall not be taken from mortgagor or mortgagee unless full payment of mortgagee's demand be first made, which, if done by attaching or executing creditor of mortgagor, shall entitle him to hold such property and the possession thereof, under his levy for repayment to him of amount so paid in addition to his own individual demand; and any officer executing execution may sell such property for amount of such mortgage demand, in addition to amount of execution, and out of proceeds of sale first satisfy such mortgage demand. In case of such levy of attachment or execution upon such mortgaged personal property, when amount of mortgage demand not paid to mortgagee, officer may expose property for sale, and may sell same subject to rights of mortgagee under mortgage, and purchaser shall take property subject to such rights and to possession of parties to mortgage. Lien of mortgagee on a growing crop shall continue until after crop harvested and threshed or baled, or otherwise prepared for market, and delivered to mortgagee or his order; but chattel mortgage upon a growing crop may be executed as well before as after crop planted, and when executed

before crop planted, it shall be expressed in mortgage that the parties intend it shall take effect upon crops when planted. All chattel mortgages shall be recorded in indexed books marked "Records of Chattel Mortgages," and the mortgages therein recorded shall be canceled and discharged in same manner as mortgages on real property. No chattel mortgage shall be given or be valid for a less sum than one hundred dollars. Compiled Laws to 1900, § 2705.

Nothing in the above section shall apply to contracts of bottomry, respondentia, or assignments or hypothecations of vessels, or goods at sea or in foreign states, or without Nevada, in case assignee, or mortgagee, shall take possession of such goods as soon as may be, after their arrival within Nevada. *Ibid.*, § 2706.

Mortgagor of personal property shall not sell or dispose of it or remove it from county where mortgage recorded, during time mortgage in force, with intent to hinder, delay, or defraud mortgagee, without written consent of mortgagee first had and obtained. Any person violating any of these provisions is guilty of misdemeanor. *Ibid.*, §§ 4306, 4307.

Any mortgage or lien recorded may be discharged or assigned by entry on margin of record, signed by mortgagee or personal representative or assignee, acknowledging satisfaction of or value received for mortgage or lien, and the debt secured thereby in presence of recorder or his deputy, who shall subscribe same as witness, and such entry shall have same effect as a deed of release or assignment duly acknowledged and recorded. *Ibid.*, § 2674.

Any mortgage shall also be discharged upon the record thereof by recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by mortgagee, his personal representative or assignee, acknowledged, or approved and certified, as prescribed, to entitle conveyances to be recorded, specifying that such mortgage is paid or otherwise satisfied or discharged. *Ibid.*, § 2675.

If mortgagee or personal representative or assignee, as case may be, after full performance of conditions of mortgage, whether before or after breach, shall, for space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge certificate of discharge or release, he is liable to mortgagor, heirs or assigns, in sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal. *Ibid.*, § 2677.

There shall be but one action for recovery of debt, or enforcement of any right secured by mortgage or lien upon real estate or personal property. In such action, judgment shall be rendered for amount found due plaintiff, and court may, by its decree or judgment, direct a sale of the incumbered property (or such part as is necessary), and application of proceeds of sale to payment of costs and expenses of sale, costs of suit, and amount due plaintiff. If it appear from sheriff's return there is a deficiency of such proceeds and a balance still due plaintiff, judgment shall then be docketed for such balance against defendant or defendants personally liable for the debt, and shall, from time of such docketing, be lien upon the real estate of judgment debtor, and an execution may thereupon be issued by the clerk of the court, in like manner and form as upon other judgments, to collect such balance or deficiency from the property of judgment debtor. *Ibid.*, § 3343.

If there be surplus after payment of amount due on mortgage, lien or incumbrance, with costs, court may cause same to be paid to person entitled to it, and in meantime may direct it to be deposited in court. *Ibid.*, § 3344.

If debt for which mortgage, lien or incumbrance is held be not all due, as soon as sufficient of property has been sold to pay amount due, with costs, sale shall cease; and afterwards, as often as more becomes due for principal or interest, court may, on motion, order more to be sold. But if property cannot be sold in portions without injury to parties, the whole may be ordered sold in first instance, and entire debt and costs paid, there being a rebate of interest where such rebate is proper. *Ibid.*, § 3345.

A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, all quartz

and mining claims, and all such personal property as shall be fixed in its structure to the soil, acknowledged like mortgages upon real estate and recorded in office of recorder in county where property situated, shall have same effect against third persons as mortgages upon real estate. This Act shall not interfere or conflict with the lawful mining rules, regulations, or customs in regard to locating, holding, or forfeiture of claims, but, in all cases of mortgages of mining interests under this Act, mortgagee shall have right to perform same acts mortgagor might have performed for purpose of preventing forfeiture of same under said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by court ordering the sale upon a foreclosure; but such compensation shall, in no case, exceed amount realized from the claim by a foreclosure and sale. *Ibid.*, §§ 2715, 2716.

NEW HAMPSHIRE.

Personal property and crops of every description, whether same have or have not come to maturity, are subject to mortgage agreeably to provisions of this chapter. Public Statutes and Session Laws to 1901, p. 446, § 1 of chap. 140.

Possession of mortgaged property must be delivered to and retained by mortgagee, or mortgage must be recorded in office of clerk of town where mortgagor resides at time of making same. *Ibid.*, p. 446, § 2.

Chattel mortgages may be recorded in unincorporated places which may be required to pay a public tax, and the clerks thereof must record same. If no such clerk, mortgage may be recorded by clerk of town or place adjoining unincorporated place paying greatest proportion of state tax. *Ibid.*, p. 446, §§ 3 and 4.

When mortgagor of personal property resides out of state at time of making mortgage, it shall be recorded in town where property situate. *Ibid.*, p. 446, § 5.

Each mortgagor and mortgagee shall make and subscribe affidavit in substance as follows:

568. Affidavit to Chattel Mortgage.

"We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the condition thereof, and for no other purpose whatever, and that said debt was not created for the purpose of enabling the mortgagor to execute said mortgage, but is a just debt, honestly due and owing from the mortgagor to the mortgagee."

Ibid., p. 446, § 6.

Where copartners parties to mortgages of personal property, affidavit may be made and subscribed by either partner in behalf of firm. *Ibid.*, p. 446, § 7.

When a corporation is a party to such mortgage, affidavit may be made and subscribed by any director, or by any person authorized by corporation to make or to receive mortgage. *Ibid.*, p. 446, § 8.

If mortgage given to indemnify mortgagee against any liability assumed, or to secure fulfilment of any agreement other than for payment of debt due from mortgagor to mortgagee, such liability or agreement shall be stated truly and specifically in condition of mortgage, and affidavit shall be so far varied as to verify the validity, truth, and justice of such liability or agreement. *Ibid.*, p. 446, § 9.

Every such affidavit, with certificate of justice who administered oath, shall be made upon or appended to mortgage, and recorded therewith. All wilful falsehood committed in any such affidavit is perjury. *Ibid.*, p. 447, §§ 10 and 11.

No such mortgage is valid against any person except mortgagor, executors and administrators, unless possession delivered or mortgage sworn to and recorded in manner herein prescribed. *Ibid.*, p. 447, § 12.

No mortgagor of personal property shall sell or pledge any of it without consent of mortgagee, in writing, indorsed upon mortgage and upon margin of record; nor execute a second or subsequent mortgage of the property while same is subject to previously existing mortgage given by him, unless fact of existence of previous mortgage is set forth in subsequent one. Any mortgagor guilty of such an offense shall be fined double the value of property so wrongfully sold, pledged, or mortgaged, one half to use of party injured, and the other half to use of the county. *Ibid.*, p. 447, §§ 13-15.

Any person who removes or conceals any mortgaged personal property with the intent of placing it beyond control of mortgagee, or aids in so doing, and any mortgagor of such property who assents to such removal or concealment, shall be fined or imprisoned. *Ibid.*, p. 447, § 16.

Nothing in this chapter (chapter 140) shall affect any transfer of property under bottomry or respondentia bonds, or of any ships or goods at sea or abroad, if mortgagee shall take possession as soon as may be after their arrival in state. *Ibid.*, p. 447, § 17.

Every town clerk shall keep a book of records for personal mortgages and shall record therein any mortgage, transfer, consent, and discharge. *Ibid.*, p. 447, § 18.

Whenever condition of mortgage of personal property broken, mortgagor may redeem by paying or tendering to mortgagee amount due on mortgage, with all reasonable expenses incurred by reason of breach of condition, at any time before sale as hereinafter prescribed. Mortgagee may, at any time after thirty days from time of condition broken, sell the property, or any part, at auction, notice of time and place, and purposes of sale being posted at two or more public places in town where it is to take place, four days at least prior thereto. Mortgagee shall notify mortgagor of time and place of sale, by notice in writing delivered to him or, if a corporation, to person on whom legal process may be served, or left at his abode, if within town, at least four days previous to sale. If mortgagor does not reside in the town, such notices sent by mail sufficient. Mortgagee may purchase at sale, and proceeds shall be applied by him to payment of demand secured by mortgage, and of expenses of keeping and sale; and residue, if any, shall be paid to mortgagor on demand. *Ibid.*, pp. 447, 448, §§ 19-22.

No lien reserved on personal property sold conditionally and passing into hands of conditional purchaser, except lien on household goods created by lease thereof, containing option in favor of lessee to purchase same at a time specified, shall be valid against attaching creditors, or subsequent purchasers, without notice, unless vendor of such property takes written memorandum, signed by purchaser, witnessing lien, sum due thereon, and containing affidavit as prescribed in the following section, and causes such memorandum to be recorded in town clerk's office of town where purchaser resides, if within state; or where vendor resides, if within state, and purchaser does not reside in state; or where property situated, if neither purchaser nor vendor resides in state. *Ibid.*, p. 448, § 23.

Each vendor and purchaser shall make and subscribe an affidavit in substance as follows:

569. Affidavit on Conditional Sale.

"We severally swear that the foregoing memorandum is made for the purpose of witnessing the lien and the sum due thereon as specified in said memorandum, and for no other purpose whatever, and that said lien and the sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum stated to be due thereon is honestly due thereon and owing from the purchaser to the vendor."

Ibid., p. 448, § 24.

When copartners or corporations are parties to such a memorandum, affidavit may be made and subscribed as in case of chattel mortgages. *Ibid.*, p. 448, § 25.

If record required by section twenty-three is made within twenty days after property delivered, lien reserved shall be valid against all attaching creditors and purchasers; but if not made until after expiration of twenty days, it shall be valid against those attaching creditors and purchasers only who become such after the record. *Ibid.*, p. 448, § 26.

In any contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that the title to the property sold or contracted to be sold, although possession may be delivered immediately or subsequently, shall not vest in purchaser until purchase price paid, or that the seller shall have lien thereon for unpaid purchase-money. And in any contract for leasing or hiring of such property, it may be stipulated that there be a conditional sale thereof at termination of contract, and rentals or amounts to be received under contract may, as paid, be treated as purchase money and title shall not vest in lessee or bailee until purchase-price paid and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract shall be valid against subsequent judgment creditor, or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties, and duly acknowledged by vendee or lessee or bailee, as case may be, or duly proved, like deeds, and filed for record in office of secretary of state, and unless each locomotive engine, or car so sold, leased, or hired, or contracted to be sold, leased, or hired, shall have name of vendor, lessor, or bailor plainly marked on each side, followed by word owner, or lessor, or bailor, as case may be. These contracts shall be recorded by secretary of state in book of records to be kept for that purpose. And on payment in full of purchase-money, and performance, of terms and conditions stipulated in contract, a declaration in writing to that effect may be made by vendor, lessor, or bailor, or assignee, on margin of record of contract, duly attested, or by separate instrument acknowledged by vendor, lessor, or bailor, or assignee, and recorded as aforesaid. *Ibid.*, pp. 448, 449, chap. 25 of 1893, §§ 1 and 2.

Any personal property not exempt from attachment, subject to a mortgage, may be attached as property of mortgagor, the attaching creditor or officer paying or tendering to mortgagee amount for which property holden, as ascertained in the following manner. Creditor or officer may demand of mortgagee, an account on oath of amount due upon the debt or demand secured by the mortgage, and officer may retain property in his custody, without tender or payment, until account is given. If account not given within fifteen days after demand, or if false account given, property shall be holden discharged from mortgage. But any person who fails to render account, or true account, may be relieved upon bill in equity, when it shall appear that the failure was caused by fraud, accident, mistake, or misfortune, and that such relief would be just and equitable. *Ibid.*, pp. 702, 703, §§ 17 and 18 of chap. 220.

Personal property subject to mortgage may be taken on execution in the same manner that it may be attached, and may be sold in same manner as other personal property, and creditor and officer shall have same right to demand account of amount due, and to hold property, if no account or false account given, as in case of attachment. *Ibid.*, pp. 730, 731, § 3 of chap. 232.

NEW JERSEY.

Every chattel mortgage shall vest in mortgagee or owner thereof right to possession, so far as necessary for purpose of preventing removal out of county where they were at time of execution or delivery of mortgage, and of recovering chattels, if so removed. Laws 1902, chap. 153, § 1.

When chattels so removed by party and recovered by mortgagee or owner of mortgage by means of legal proceedings, or when removal prevented by like proceedings, court where proceedings are had may regulate disposition of

chattels and prescribe such terms for possession thereof by any person interested therein as will protect rights of mortgagee or owner of such mortgage. *Ibid.*, § 2.

Above provisions shall not apply to any vessel, rolling stock of railroads, or to any chattels which, in ordinary use thereof at time of execution of mortgage, are taken from time to time out of county wherein so mortgaged. *Ibid.*, § 3.

Every mortgage or conveyance intended to operate as mortgage of goods and chattels, not accompanied by immediate delivery and followed by continued change of possession, is absolutely void against creditors of mortgagor and subsequent purchasers and mortgagees in good faith, unless the mortgage, having annexed thereto an affidavit or affirmation made and subscribed by holder of mortgage, his agent or attorney, stating consideration of mortgage and as nearly as possible the amount due and to grow due thereon, be recorded as directed in the succeeding section; but this shall not apply to mortgage of personal property included in a mortgage of franchise and real estate by railroad company, recorded or registered as mortgage of real estate in every county where railroad or any part of it located, and same need not be recorded as chattel mortgage. *Ibid.*, § 4.

The instruments mentioned in preceding section and not excepted, shall be recorded in clerk's office of county where property so mortgaged shall be at time of execution of instrument, except county having office of register of deeds and mortgages, where it must be recorded in such office. *Ibid.*, § 5.

No chattel mortgage or conveyance intended to operate as such shall be recorded unless execution thereof is first acknowledged or proved and the acknowledgment or proof certified thereon in the manner prescribed by the act entitled "An act respecting conveyances." *Ibid.*, § 6.

The records and certified copies shall be evidence in same manner and in like cases as the record of deeds. *Ibid.*, § 7.

Every chattel mortgage so recorded shall be valid against creditors of mortgagor and subsequent purchasers and mortgagees, from time of recording until canceled of record in manner provided for canceling of mortgages of real estate. *Ibid.*, § 8.

If anyone falsely swear or affirm in the making of any affidavit or affirmation provided for in this act, he is guilty of perjury. *Ibid.*, § 9.

Every chattel mortgage, bill of conditional sale, conveyance or other instrument, in writing, of the nature of a chattel mortgage made upon, or for any household goods and furniture in use and possession of any family, not given to secure purchase-money for such goods and furniture, is void, unless first signed, sealed, executed and acknowledged, according to law, by husband and wife of family, and recorded as herein provided in county where property situate at time of execution. *Ibid.*, § 10.

Any chattel mortgage may, upon application to judge of circuit court or court of common pleas of county where recorded, be canceled of record by order of judge in same manner and upon same proceedings, and under same conditions and circumstances as is provided by law for cancellation of mortgage upon real estate by order of judge of said courts. *Ibid.*, § 11.

Any circuit judge or law judge of any county may by order direct county clerk of said county, or register when there is such office in said county, to cancel of record any mortgage on real estate or chattels, or both, of record in said county, whenever he shall be satisfied by proof that mortgagee therein, or holder of said mortgage, has been fully paid principal and interest due on said mortgage, or mortgagor shall deposit with county clerk any balance of principal and interest, if any, still due thereon, according to terms of mortgage; and any one or more of mortgagors or parties in interest may apply for such order, and judge shall order notice of application to be served on mortgagee or mortgagees, assignee or assignees or holder of record of said mortgage, if living, and if not living, then upon his, her or their executor or executors, or administrator or administrators, if any, or if there be no executor or administrator, then upon the next of kin of said mortgagee

or mortgagees, if residents of this State, the same as a summons should be served; and if any of the persons entitled to notice as aforesaid shall be non-residents of State or cannot, upon due inquiry, be found therein, then such notice shall be served by publication, once a week for four weeks, in newspaper published in said county, to be designated by said judge, and copies thereof shall be mailed to such persons at their post-office address, if same can be ascertained. General Statutes of 1895, p. 2115, § 65, as amended by L. 1906, chap. 221.

When such order is filed with clerk or register of such county, and money deposited with him as required by order, if order so directs, then clerk shall discharge and cancel of record said mortgage, and said clerk or register shall enter on margin of registry or record of mortgage, and opposite thereto, the words "canceled by order," entering date of order and filing it. General Statutes of 1895, p. 2115, § 66.

Provision is made for cancellation of mortgage of record for more than ten years given to a corporation or body politic, where corporation has ceased to exist or to do business, for at least five years prior to application or proceeding and no officer can be found on whom to serve notice. Circuit or law judge may order corporation proceeded against by name and authorize notice of purpose and effect of application or proceeding to be published, and may direct the clerk or register to cancel. Provision is also made for the cancellation of mortgages of thirty years record. Laws 1900, chap. 35.

NEW MEXICO.

Personal property of every description is subject to mortgage; but growing crops cannot be mortgaged until matured and gathered, and any mortgage on such growing crops is void. Compiled Laws 1897, § 2360.

All chattel mortgages, or other instruments of writing, having effect of mortgage or lien upon personal property, shall be acknowledged by owner or mortgagor and recorded in same manner as conveyances affecting real estate. Upon receipt of such instrument recorder shall indorse on back the time of receiving it and, when recorded, the party in whose favor it is executed may withdraw it. Recorder shall keep a book properly indexed, in which shall be recorded affidavits of renewal of chattel mortgages, and shall indorse on the back thereof time of filing same, and shall refer on margin of record of same to book and page where mortgage recorded, which the affidavit is intended to renew. When mortgage acknowledged and recorded in manner prescribed or when affidavit of renewal recorded as required, and it shall be shown to court by oath or affidavit of party wishing to use same, or either of them, or of anyone knowing the fact that such mortgage or affidavit is lost or not in possession of party wishing to use same, or either of them, the record thereof or transcript, certified by recorder, under seal of his office, may be received in evidence without further proof. *Ibid.*, § 2361.

Every mortgage so filed is void against creditors of person making same or subsequent purchasers or mortgagees in good faith, after expiration of one year after filing, unless within thirty days next preceding expiration of term of one year from filing, and each year thereafter mortgagee, his agent or attorney, shall make affidavit exhibiting interest of mortgagee in property at time last aforesaid, claimed by virtue of mortgage, and if mortgage is to secure payment of money, amount yet due and unpaid: such affidavit shall be attached to and filed with instrument or copy on file to which it relates. *Ibid.*, § 2362.

If affidavit made and filed before any purchase of such mortgaged property is made, or other mortgage deposited, or lien obtained thereon in good faith, it shall be valid to continue in effect such mortgage, as if same made and filed within period above provided. *Ibid.*, § 2363.

A certified copy of such original instrument, or any copy thereof, so filed as aforesaid, including any affidavit so made, shall be evidence, but only of fact that such instrument or copy and affidavit was received and filed according to indorsement of recorder thereon. *Ibid.*, § 2364.

In absence of stipulation to contrary, mortgagor of real or personal property shall have right of possession. *Ibid.*, § 2365.

When mortgage of personal property fully paid or satisfied, mortgagee, his assignee or personal representative must enter satisfaction or cause satisfaction to be entered of record, under head of remarks, on record of mortgages, and any mortgagee or assignee of such mortgagee, who shall neglect or refuse so to enter satisfaction of mortgage, shall be liable in damages to mortgagor, grantee or heirs, in sum of one hundred dollars, to be recovered in civil action before district court, said sum to be regarded as fixed and liquidated damages. *Ibid.*, § 2366.

After condition broken, mortgagee or his assignee may proceed to sell the mortgaged property, or so much as is necessary to satisfy mortgage and costs of sale; having first given notice of time and place of sale, by written or printed handbills, posted up in at least four public places in precinct where property is to be sold, at least ten days previous to day of sale. *Ibid.*, § 2367.

If mortgagee or assignee shall have obtained possession of mortgaged property, either before or after condition broken, mortgagor or any subsequent mortgagee, may demand in writing sale of property. In such case mortgagee shall proceed to sell property, having first given notice as provided in preceding section. *Ibid.*, § 2368.

If after satisfying mortgage and costs of sale there shall be surplus, same shall be paid to any subsequent mortgagee entitled thereto, or to mortgagor or his assignee. *Ibid.*, § 2369.

Any person having conveyed to another any personal property by chattel mortgage or other instrument of writing having effect of mortgage or lien upon such property, who during existence of mortgage or lien, shall sell, transfer, conceal, take, drive or carry away, or in any manner dispose of property or any part, or cause or suffer same to be done, without written consent of holder of such mortgage or lien, is guilty of misdemeanor. *Ibid.*, § 2370.

NEW YORK.

Every mortgage or conveyance intended to operate as mortgage of goods and chattels or of canal boat, steam tug, scow or other craft, or appurtenances thereto, navigating the canals of state, not accompanied by immediate delivery, and followed by continued change of possession, is void against creditors of mortgagor, and subsequent purchasers and mortgagees in good faith, unless mortgage, or copy, filed as directed in this article. Lien Law, § 230, Birdseye, C. & G. Cons. Laws, p. 3241.

Mortgages creating lien upon real and personal property, executed by corporation as security for payment of bonds issued by such corporation, or by telegraph, telephone or electric light corporation, and recorded as mortgage of real property in each county where property located or through which line of such telegraph, telephone or electric light corporation runs, need not be filed or refiled as chattel mortgages. *Ibid.*, § 231, p. 3247.

An instrument, or copy, if intended to operate as mortgage of canal boat, steam tug, scow or other craft, or of appurtenances, navigating canals of state, must be filed in office of comptroller, and need not be filed elsewhere. Every other chattel mortgage, or an instrument intended to operate as such, or copy, must be filed in town or city where mortgagor, if resident of state, resides at time of execution thereof, and if not resident, in city or town where property mortgaged is at time of execution of mortgage. If more than one mortgagor, mortgage, or certified copy, must be filed in each city or town within state where each mortgagor resides at time of execution thereof. In city of New York, such instrument must be filed as follows, namely: In Borough of Brooklyn, in office of register of county of Kings; in borough of Queens, in office of clerk of Queens county; in borough of Richmond, in office of clerk of county of Richmond, and in borough of Manhattan and borough of Bronx, in office of register of the city and county of New York. In every other city or town of state, in office of city or town clerk, unless there is

a county clerk's office in such city or town, in which case it must be filed therein. If the chattels mortgaged are in city of New York at time of execution of mortgage, mortgage or copy must be filed in county where mortgagor alleges to reside at time of execution of mortgage, and in county where property is situated. *Ibid.*, § 232, p. 3247.

Such officers shall file every such instrument presented to them for that purpose, and indorse thereon its number and time of its receipt. They shall enter in book, provided for that purpose, in separate columns, names of all parties to each mortgage so filed, arranged in alphabetical order, under head of "mortgagors" and "mortgagees," number of such mortgage or copy and date of filing thereof; and, if mortgage be upon a craft navigating the canals, and filed in office of comptroller, name of the craft shall also be inserted. In city of New York such officers shall in addition to entry aforesaid enter in another book provided for that purpose a statement of premises in which chattels mortgaged are contained, arranged in alphabetical order, under name of street or avenue where premises situated and giving number of such mortgage or copy and date of filing. In case no street or avenue is mentioned in description, in mortgage or copy, of premises in which chattels are contained, then a statement of such premises shall be entered under title "miscellaneous." Except in city of New York such officers at time of filing of such instrument shall upon request issue to person filing same a receipt in writing, which shall contain names of parties to mortgage, its date, amount and date and time of filing. *Ibid.*, § 233, p. 3249.

Chattel mortgage, except as otherwise provided in this article, shall be invalid against creditors of mortgagor, and subsequent purchasers or mortgagees in good faith, after expiration of first or any succeeding term of one year, reckoning from time of first filing, unless,

1. Within thirty days next preceding expiration of each such term, statement containing description of mortgage, names of parties, time when and place where filed, interest of mortgagee or any person who has succeeded to his interest in property claimed by virtue thereof, or

2. A copy of mortgage and indorsements, with statement attached or indorsed, showing interest of mortgagee or person who has succeeded to his interest in mortgage, is filed in proper office in city or town where mortgagor then resided, if then a resident of town or city where mortgage or a copy of such a statement last filed; if not such resident, but resident of state, copy of mortgage, with such statement, shall be filed in proper office of town or city where he then resides; and if not resident of state, then in proper office of city or town where property so mortgaged was at time of execution of mortgage. Where chattels mortgaged were located in city of New York at time of execution of mortgage, copy of mortgage and indorsements with a statement attached, or indorsed, showing interest of mortgagee or person who has succeeded to his interest in mortgage, must be filed in same office where original mortgage or copy was filed at time of execution of same. Except in city of New York officer with whom such a renewal statement or copy of a mortgage is filed shall upon request issue to person filing same a receipt in writing, which shall contain names of parties to instrument filed, its date, amount and date and time of filing. *Ibid.*, § 235, p. 3250.

Every mortgage upon canal boat or other craft navigating canals of state, filed as provided in this article, shall be valid against creditors of mortgagor and subsequent purchasers or mortgagees in good faith, as long as debt which mortgage secures is enforceable. From time of filing, every such mortgage shall have preference and priority over all other claims and liens, not existing at time of filing. *Ibid.*, § 236, p. 3255.

A copy of original instrument, or of a copy thereof, including any statement relating thereto, certified by officer with whom same is filed, may be received in evidence, but only of fact that such instrument, or copy, or statement was received and filed according to indorsement thereon; and original indorsement upon instrument or copy may be received in evidence only of facts stated in such indorsement. *Ibid.*, § 237, p. 3255.

Upon payment or satisfaction of a chattel mortgage, mortgagee, his assignee or legal representative, upon request of mortgagor or of any person interested in mortgaged property, must sign and acknowledge certificate setting forth such payment or satisfaction. The officer with whom mortgage or copy is filed must, on receipt of such certificate, file same in his office, and write word "discharged" in book where mortgage entered, opposite entry thereof, and mortgage is thereby discharged. *Ibid.*, § 238, p. 3256.

Every sale of goods and chattels in possession or under control of vendor, and every assignment of goods and chattels by way of security or on any condition, but not constituting a mortgage nor intended to operate as mortgage, unless accompanied by immediate delivery followed by continued change of possession, is presumed to be fraudulent and void against all persons who are creditors of vendor or person making sale or assignment, including all persons who are his creditors at any time while such goods or chattels remain in his possession or under his control or subsequent purchasers of such goods and chattels in good faith; and is conclusive evidence of such fraud, unless it appear, on part of person claiming, under the sale or assignment, that it was made in good faith, and without intent to defraud such creditors or purchasers. But this section does not apply to contracts of bottomry or respondentia, or to assignment of vessel or goods at sea or in foreign port. Personal Property Law, § 36, Birdseye, C. & G., p. 4206.

Term "conditional vendor," when used in this article, means person contracting to sell goods and chattels upon condition that ownership thereof is to remain in such person, until such goods and chattels are paid for or until the occurrence of any future event or contingency; term "conditional vendee," when so used, means person to whom such goods and chattels are so sold. *Ibid.*, § 60, p. 4217.

Whenever railroad equipment and rolling stock is sold, leased or loaned under contract, which provides that title to property, notwithstanding use and possession by vendee, lessee or bailee, shall remain in vendor, lessor or bailor, until terms of contract as to payment of installments, amounts or rentals payable, or performance of other obligations thereunder, are fully complied with, and that title to such property shall pass to vendee, lessee or other bailee on full payment therefor, such contract shall be invalid as to any subsequent judgment creditor of or purchaser from such vendee, lessee or bailee for valuable consideration, without notice, unless

1. Such contract is in writing, duly acknowledged and recorded in book in which real estate mortgages are recorded in office of county clerk or register of county in which is located principal office or place of business of vendee, lessee or bailee; and unless

2. Each locomotive or car so sold, leased or loaned, has name of vendor, lessor or bailor, or of assignee of vendor, lessor or bailor, plainly marked upon both sides, followed by word owner, lessor, bailor or assignee, as case may be. *Ibid.*, § 61, p. 4217.

Except as otherwise provided in this article, all conditions and reservations in contract for conditional sale of goods and chattels, accompanied by delivery of thing contracted to be sold, to effect that ownership of such goods and chattels is to remain in conditional vendor or in a person other than conditional vendee, until paid for, or until occurrence of a future event or contingency, shall be void as against subsequent purchasers, pledgees or mortgagees, in good faith, and as to them sale shall be deemed absolute, unless contract of sale, containing such conditions and reservations, or copy, be filed as directed in this article, and unless the other provisions of Lien Law applicable to such contracts are duly complied with. Every such contract for conditional sale of any goods and chattels attached, or to be attached, to a building, shall be void against subsequent bona fide purchasers or incumbrancers of premises on which said building stands, and as to them the sale shall be deemed absolute, unless, on or before date of delivery of such goods or chattels at such building, such contract shall have been duly and properly filed and indexed as directed in this article and unless said

contract shall contain brief description, sufficient for identification, of premises which said building occupies, or upon which said building stands, and if in city or village its location by street number, if known, and if in city or county where block system of recording and indexing conveyances is in use, section and block within which located. *Ibid.*, § 62, p. 4218.

Such contracts, except contracts for conditional sale of goods and chattels supplied for a building and attached or to be attached thereto, shall be filed in city or town where conditional vendee resides, if he resides within state at time of execution thereof, and if not, in city or town where such property is at such time. Such contract shall be filed in city of New York, as follows, namely: in borough of Brooklyn in said city, such instrument shall be filed in office of register of the county of Kings; in borough of Queens in said city, in office of clerk of Queens county; in borough of Richmond in said city, in office of clerk of county of Richmond, and in borough of Manhattan and borough of Bronx in said city, in office of register of county of New York; in every other city or town of state, in office of city or town clerk, unless there is a county clerk's office in such city or town, in which case it shall be filed in such office. But all such contracts for conditional sale of goods and chattels, attached or to be attached to a building, shall be filed with register of city or county or with county clerk of county, in case there is no register of such county, in which the premises whereon the said building stands are located. *Ibid.*, § 63, p. 4220.

The provisions of article ten, (§§ 230-238) of the Lien Law relating to chattel mortgages apply to the indorsement, entry, refileing and discharge of contracts for conditional sale of goods and chattels, except contracts for conditional sale of goods and chattels attached or to be attached to a building. The officers with whom such first mentioned contracts are filed shall enter future contingency or event required to occur before ownership of goods and chattels shall pass from vendor to vendee, amount due upon contract and time when due. Name of conditional vendor shall be entered in column of "mortgagees," and name of conditional vendee in column of "mortgagors." Where such contracts are for goods and chattels, attached or to be attached to a building, the following provisions apply to indorsement, entry, refileing and discharge. The above named officers with whom such contracts are directed to be filed shall enter the future contingency or event required to occur before ownership of said goods and chattels shall pass from vendor to vendee, amount due upon contract, and time when due, and shall file contract presented to them for that purpose, and indorse thereon its number and time of receipt; they shall enter in book provided for that purpose, in separate columns, names of all parties to each contract so filed, arranged in alphabetical order, under head of "vendees" and "vendors," number of such contract and date of filing thereof, and under column headed "property," they shall enter brief description sufficient for identification of land upon which said building stands, and if in city or village, its location by street and number, if known, and if in city or county where block system of recording and indexing conveyances is in use, section and block in which said land is situated. The said officers shall also keep index so as to afford correct and easy reference to books containing entries in regard to such last named contracts. In all cities and counties where block system of recording and indexing conveyances is in use, index shall be arranged according to block numbers. A contract for conditional sale of goods and chattels, attached or to be attached to a building, shall be invalid against creditors of conditional vendee and against subsequent purchasers or mortgagees in good faith of such goods and chattels or of premises upon which said building stands, after expiration of first or any succeeding term of one year, reckoning from time of first filing, unless: (1) within thirty days preceding expiration of such term a statement containing description of contract, names of parties, time when and place where filed, interest of conditional vendor or of person who has succeeded to his

interest in property, claimed by virtue thereof; or (2) a copy of contract and indorsements, with statement attached or indorsed on, showing interest of conditional vendor or person who has succeeded to his interest in contract, is filed in office where contract originally required to be filed; and officer with whom contract originally filed shall enter, in separate column, in book above provided for, in column headed "date of refiling," date of refiling of contract. The officers performing services under this article are entitled to receive the same fees as for like services relating to chattel mortgages. Upon the title to goods and chattels affected by any such last mentioned contract becoming absolute in conditional vendee or his successor in interest by payment of full consideration for which contract made, conditional vendor, his assignee or legal representative, upon request of conditional vendee or of any person interested in property covered by contract, must sign and acknowledge certificate setting forth such payment. The officer with whom contract is filed must, on receipt of such certificate, file same in his office and write word "discharged" in book where contract entered, opposite the entry thereof, and contract is thereby discharged. *Ibid.*, § 64, p. 4221.

Whenever articles are sold upon condition that title shall remain in vendor, or in other person than vendee, until payment of purchase price, or occurrence of a future event or contingency, and same are retaken by vendor or successor in interest, they shall be retained for period of thirty days from time of retaking, and during such period vendee or successor in interest may comply with terms of contract, and thereupon receive property. After expiration of such period, if such terms are not complied with, vendor, or successor in interest, may cause articles to be sold at public auction. Unless so sold within thirty days after expiration of such period, vendee or successor in interest may recover of vendor amount paid on articles by vendee or successor in interest under contract for conditional sale thereof. *Ibid.*, § 65, p. 4222.

Not less than fifteen days before sale, printed or written notice shall be served personally upon vendee, or his successor in interest, if he is within county where sale is to be held; and if not within such county, or he can not be found therein, such notice must be mailed to him at his last known place of residence.

Such notice shall state terms of contract, amount unpaid thereon, amount of expenses of storage, and time and place of sale, unless amounts sooner paid. *Ibid.*, § 66, p. 4224.

Of proceeds of sale, vendor or successor in interest may retain amount due upon contract, and expenses of storage and of sale; balance shall be held by vendor or successor in interest, subject to demand of vendee or successor in interest, and notice that such balance is so held shall be served personally or by mail upon vendee or his successor in interest. If balance not called for within thirty days from time of sale, it shall be deposited with treasurer or chamberlain of city or village, or supervisor of town where sale held, and there shall be filed therewith copy of notice served upon vendee or his successor in interest and a verified statement of amount unpaid upon contract, expenses of storage and sale and amount of balance. The officer with whom such balance was deposited shall credit vendee or his successor in interest with amount thereof and pay same to him on demand after sufficient proof of identity. If balance remains in possession of such officer for period of five years unclaimed by person legally entitled thereto, it shall be transferred to funds of town, village or city, and be applied and used as other moneys belonging to such town, village or city. *Ibid.*, § 67, p. 4224.

An action may be maintained to foreclose lien upon chattel, for sum of money, in any case where such lien exists at commencement of action. The action may be brought in any court, of record or not of record, which would have jurisdiction to render judgment, in action founded upon contract for sum equal to amount of lien. *Lien Law*, § 206, *Birdseye, C. & G. Cons. L.*, p. 3239.

Where action brought in supreme court, city court of city of New York, or a county court, if plaintiff is not in possession of chattel, a warrant may be granted by court, or a judge thereof, commanding sheriff to seize chattel and safely keep it to abide final judgment in action. The provisions of title third of chapter seven of code of civil procedure apply to such warrant, and to proceedings to procure it, and after it has been issued, as if it was a warrant of attachment, except as otherwise expressly prescribed in this article. *Ibid.*, § 207, p. 3239.

In action brought in court specified in last section, final judgment, in favor of plaintiff, must specify amount of lien, and direct sale of chattel to satisfy same and costs, if any, by a referee appointed thereby, or an officer designated therein, in like manner as where sheriff sells personal property by virtue of execution; and application by him of proceeds of sale, less his fees and expenses, to payment of amount of lien, and costs of action. It must also provide for payment of surplus to owner of chattel, and for safe keeping of surplus, if necessary, until claimed by him. If a defendant, upon whom summons personally served, is liable for amount of lien, or part thereof, it may also award payment accordingly. *Ibid.*, § 208, p. 3240.

Where action is brought in a court, other than one of those specified in section two hundred and seven, if plaintiff is not in possession of chattel, a warrant, commanding proper officer to seize chattel, and safely keep it to abide judgment, may be issued, in like manner as warrant of attachment may be issued in action founded upon a contract brought in same court; and the provisions of law, applicable to warrant of attachment, issued out of that court, apply to warrant, issued as prescribed in this section, and to proceedings to procure it, and after it has been issued; except as otherwise specified in judgment. A judgment in favor of plaintiff, in such action, must correspond to judgment, rendered as prescribed in last section, except that it must direct sale of chattel by an officer to whom an execution, issued out of the court, may be directed; and payment of surplus, if its safekeeping is necessary, to county treasurer, for benefit of owner. *Ibid.*, § 209, p. 3240.

Sections two hundred and six to two hundred and nine inclusive do not affect any existing right or remedy to foreclose or satisfy lien upon a chattel, without action; and they do not apply to a case, where another mode of enforcing lien upon a chattel is specially prescribed by law. *Ibid.*, § 210, p. 3241.

For forms usual in New York, see Nos. 488-515, *supra*.

NORTH CAROLINA.

Any person indebted to another in a sum to be secured not exceeding at the time of executing the instrument herein provided for the sum of three hundred dollars, may execute a chattel mortgage in form substantially that which follows:

570. Chattel Mortgage, Statutory Form.

I, _____, of the county of _____ in the state of North Carolina, am indebted to _____, of _____ county, in said state, in the sum of _____ dollars, for which he holds my note to be due the _____ of _____, A. D. 19____, and to secure the payment of the same, I do hereby convey to him these articles of personal property, to wit _____; but on this special trust, that if I fail to pay said debt and interest on or before the _____ day of _____ A. D. 19____, then he may sell said property, or so much thereof as may be necessary, by public auction for cash, first giving twenty days' notice at three public places, and

apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me. Given under my hand and seal, this day of , A.D. 19 .

(SEAL.)

Revisal of 1908, § 1039.

Such chattel mortgage shall be good to all intents and purposes when the same shall be duly registered according to law, but no sale thereunder shall be made without giving at least twenty days' public notice of time and place of such sale. *Ibid.*, § 1040.

All conveyances of household and kitchen furniture by a married man made to secure payment of money or other thing of value shall be void, unless the wife join and is privately examined as in the case of a real estate deed. *Ibid.*, § 1041.

Sale under the terms of any mortgage or other contract, express or implied, whether advertised in some newspaper or otherwise shall be advertised by posting a notice at some conspicuous place at the court house door in the county where the property is situated, at least twenty days before the sale, unless a shorter time be expressed in the contract. *Ibid.*, § 1042.

All conditional sales of personal property, in which the title is retained by the bargainor, shall be reduced to writing and registered in same manner and for same fees and with same legal effect as is provided for chattel mortgages in the county where the purchaser resides, or in case the purchaser shall reside out of the state, then in the county where the personal estate or some part thereof is situated, or in case of choses in action where the donee, bargainee or mortgagee resides. *Ibid.*, § 983.

The sale in bulk of a large part* the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in regular and usual prosecution of the seller's business shall be prima facie evidence of fraud and void as against the creditors of the seller, unless the seller at least seven days before the same make an inventory showing the quantity and so far as possible the cost price to the seller of such goods included in the sale and shall within said time notify the creditors of the proposed sale and the price, terms and conditions thereof. But if the owner of said goods at any time before the sale execute a good and sufficient bond to a trustee therein named to an amount equal to the actual cash value of said stock of goods, with the condition that the seller of said stock will apply the proceeds of such sale, subject to the right of the owner or owners to retain therefrom the personal property exemption or exemptions allowed by law, so far as it will go in payment of debts actually owing by said owner or owners, then the above provisions hereof shall not apply. This shall not, however, prevent voluntary assignments or deeds of trust for the benefit of creditors, or apply to sales by executors, administrators, receivers or assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or by any public officers under judicial process. *Ibid.*, § 964a.

Whenever railroad equipment and rolling stock shall be sold, leased or loaned on condition that title, notwithstanding possession and use by vendee, lessee, or bailee, shall remain in vendor, lessor or bailor until terms of contract, as to payment of installments, amounts or rentals payable, or performance of other obligations thereunder, are complied with, contract is invalid as to subsequent judgment creditor or subsequent purchaser for valuable consideration without notice unless evidenced by writing acknowledged like a deed and registered as mortgages are registered in office of register of deeds in at least one county where vendee, lessee or bailee does business, and unless each locomotive or car so sold, leased or loaned shall have name of vendor, lessor or bailor or assignee of vendor, lessor or bailor plainly marked on both sides, followed by word owner, lessor, bailor or assignee, as case may be. *Ibid.*, § 984.

* So in original.

571. Chattel Mortgage with Note.

of the county of _____, in the state of North Carolina, indebted to _____ of _____ county in said state, in the sum of _____ dollars, for which _____ hold _____ note, to be due the _____ day of _____, A. D. 19____, and to secure the payment of the same _____ do hereby convey to _____, these articles of personal property, to wit: [*description*]

BUT ON THIS SPECIAL TRUST, that if _____ fail to pay said debt and interest on or before the _____ day of _____, A. D. 19____, then _____ may sell said property, or so much thereof as may be necessary, by public auction, for cash, first giving twenty days' notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to _____.

Given under _____ hand and seal, this _____ day of _____, A. D. 19____.

[*Signatures and seals.*]

Witness:

[*Signature.*]

§ _____, N. C.
_____, 19____.

On or before the _____ day of _____, 19____, with interest from date at the rate of _____ per cent. per annum, _____ promise to pay to the order of _____ the sum of _____ dollars, for value received, and secured by chattel mortgage of even date with this note.

[*Signatures and seals.*]

Witness:

[*Signature.*]

572. Lien Bond.

NORTH CAROLINA, }
County. }

WHEREAS, _____ ha this day agreed to make advances of supplies and money to _____ from time to time as required, during the year 19____, to an amount not to exceed _____ dollars, to be by _____ expended in the cultivation of a crop during said year, upon the following described land: [*description*]

Now, THEREFORE, in consideration of the premises, _____ do promise to pay the full amount advanced to _____ on or before the _____ day of _____, 19____, and hereby give to the said _____ a lien upon all the crops which may be made by _____ upon said land during said year, to the extent of such advances, in accordance with the statute in such case made and provided. And if _____ fail to pay the amount so advanced by the time specified, said _____ shall have power to take possession of said crop and sell the same, the proceeds to be applied to the payment of said advances, and the surplus, if any, to _____.

AND FOR THE FURTHER SECURING OF SAID ADVANCES to be made to _____ by said _____ do hereby sell and convey to _____ these articles of personal property: [*description*]

BUT ON THIS SPECIAL TRUST, that if _____ shall fail to pay the full amount of such advances made in pursuance of said agreement, on or before the _____ day of _____, A. D. 19____, _____ may sell said property, or so much thereof

as may be necessary, for cash, at public auction, first giving twenty days' notice at three public places in _____ county, of the time and place of sale, and apply the proceeds of such sale to the payment of the amount then due on account of said advances, and pay any surplus to _____.

AND IT IS FURTHER AGREED AND UNDERSTOOD, that if the party of the first part should, from any cause, fail to cultivate said crops, or do any act the effect of which would defeat the object of this conveyance, then the party of the second part shall not be obliged to make any further advances, and the indebtedness already incurred shall become due and collectible at once, in the manner hereinbefore provided.

WITNESS _____ hand and seal this _____ day of _____, 19____.
[Signatures and seals.]

Witness:

[Signature.]

_____, the owner of the land described in the foregoing instrument, do hereby agree with the said _____ in consideration of the advances to be made to _____ by _____ that the above-given lien shall have priority to the extent of the advances made by _____ to said _____ during the year 19____, over any lien to which _____ may be entitled upon the crop to be made by said _____ on said land during said year.

[Signatures and seals.]

Witness:

[Signature.]

573. Lien Bond for Conveying Chattels, Crops and Lands Combined, including Old Debts.

STATE OF NORTH CAROLINA, }
 County. }

THESE PRESENTS, between _____ of the state of North Carolina, county of _____, of the first part, and _____ of the state of North Carolina and county of _____, of the second part:

WITNESSETH, that whereas, the party of the first part is now engaged, or about to engage, in the cultivation of various crops upon _____ tract of land in _____ county, known as the [description] or any other lands he may cultivate during the present year, 19____, and that the said party of the first part desires to secure to the said party of the second part an agricultural lien, according to the act of the general assembly of North Carolina, entitled "An act to secure advances for agricultural purposes."

Now, THEREFORE, for and in consideration of _____ dollars, already advanced in the form of _____, the receipt of which is hereby acknowledged, and the further sum of _____ dollars, to be advanced from time to time during the year as needed, in the form of _____ to the party of the first part by the party of the second part, beyond which amount the advances to be made shall not go, all of which are to be used in the cultivation and housing said crops, the party of the first part sells and conveys to the party of the second part, his heirs, assigns, executors and administrators, the following property:

[description] all of which the party of the first part represents to be his own right and property, and that no other person has any claim upon the same.

TO HAVE AND TO HOLD to the use of the party of the second part, his heirs and assigns forever, also a lien upon each and every of said crops to be cultivated and made during said year, with full power to take possession of any portion or all of said crops, at any time and place after their maturity, as may be sufficient upon the sale thereof to satisfy said debt and such advances as shall have been made, and all expenses that may be incurred by the party of the second part in executing, probating, recording and enforcing this lien. And if by the day of , 19 , the aforesaid indebtedness has not been discharged by the proceeds of the sale of said crops, or otherwise, then the party of the second part is authorized to take possession of said property and sell the same, or so much thereof as will satisfy the amount then remaining due, and all costs and expenses in any way incurred by said seizure and sale. But if said indebtedness shall be paid off and discharged by the said day of , 19 , then this conveyance to be null and void.

IT IS FURTHER AGREED AND UNDERSTOOD, that if the party of the first part should from any cause fail to cultivate said crops, or do any act the effect of which would defeat the objects of this conveyance, then the party of the second part shall not be obliged to make any further advances, and the indebtedness already incurred shall become due and collectible at once, in the manner hereinbefore provided.

WITNESS hand and seal, this the day of , 19 .
 [Signatures and seals.]

Witness:
 [Signature.]

Mr. will please cancel this mortgage. This day of , 19 .

574. Agricultural Lien and Chattel Mortgage for Advances and to Secure Pre-existing Debt for Certain Counties.*

NORTH CAROLINA, }
 County. }

WHEREAS, ha agreed to make advances to for the purpose of enabling said to cultivate the lands hereinafter described, during the year 19 , the amount of said advances not to exceed dollars;

AND WHEREAS, said is indebted to said in the further sum of dollars, now due:

* For purpose of creating a valid agricultural lien for supplies to be advanced and to constitute chattel mortgage as additional security and to secure pre-existing debt, applies to Alamance, Alleghany, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Davie, Davidson, Duplin, Durham, Edgecombe, Franklin, Forsyth, Gaston, Gates, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pender, Pamlico, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Transylvania, Tyrrell, Union, Vance, Wake, Washington, Watauga, Wayne and Wilson. (Sec. 2055, Revisal of 1908.) Refers to Laws 1899, chs. 17, 247, at end of section 2055.

NOW, THEREFORE, in order to secure the payment of the same, the said do hereby convey to said all the crops of every description which may be raised during the year 19 , on the following lands in county, North Carolina, township, adjoining the lands of and also the following other property, viz.: [description]

And if by the day of , 19 , said fail to pay said indebtedness, then said may foreclose this lien, as provided in section 2054, or otherwise, and may sell said crops and other property, after ten days' notice posted at the courthouse door and three other public places in said county, and apply the proceeds to the payment of said indebtedness and all costs and expenses of executing this conveyance, and pay the surplus to said .

And the said hereby represents that said crops and other property are the absolute property of and free from encumbrance .

WITNESS hand and seal, this the day of , 19 .

[Signature and seal.]

Witness:

[Signature.]

[WAIVER OF LANDLORD'S LIEN.]

, owner of the lands described in the foregoing instrument, in consideration of the advances to be made as therein provided, do hereby agree to waive and release my lien as landlord upon said crops, to the extent of said advances made to said .

This the day of , 19 .

[Signature and seal.]

Witness:

[Signature.]

[FORM OF PROBATE.]

NORTH CAROLINA, }
County. }

The due execution of the foregoing instrument was this day proven before me by the oath and examination of , the subscribing witness thereto.

This the day of , 19 .

[Signature and seal.]

[CLERK'S FIAT TO REGISTER OF DEEDS.]

NORTH CAROLINA, }
County. }

The foregoing certificate of a of county, is adjudged to be correct. Let the instrument, with the certificate, be registered.

This the day of , 19 .

, Clerk Superior Court.

NORTH DAKOTA.

Mortgage of personal property may be made in substantially following form:

575. Chattel Mortgage, Statutory Form.

This mortgage made the _____ day of _____ in the year _____ by
A. B., of _____ by occupation _____ mortgagor, to C. D.
of _____ by occupation a _____ mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [*here describe the property*] as security for the payment to him of _____ dollars on [or, before] the _____ day of _____, in the year _____ with interest thereon [or security for the payment of a note or obligation describing it, etc.]

A. B.

Revised Codes of 1905, § 6180.

All reservations of title to personal property, as security for purchase money thereof, shall, when possession delivered to vendee, be void as to subsequent creditors without notice and purchasers and incumbrancers in good faith and for value, unless such reservation is in writing and filed and indexed the same as mortgage of personal property. In indexing such instruments register of deeds shall treat purchaser as mortgagor and vendor as mortgagee. *Ibid.*, § 6181.

Mortgage of personal property is void against creditors of mortgagor and subsequent incumbrancers in good faith for value, unless original or authenticated copy filed by depositing same in office of register of deeds of county where property or any part is then situated. The filing of mortgage of personal property in conformity with the provisions of this article (on Mortgage of Personal Property, sections 6180-6192) is notice thereof to all subsequent purchasers and incumbrancers of so much property as is then situated in county or counties where mortgage or authenticated copy filed. *Ibid.*, §§ 6182, 6183.

For purposes of this article, property in transit from possession of mortgagee to county of residence of mortgagor or to location for use is during reasonable time for transportation to be taken as situated in county where mortgagor resides, or where intended to be used. For like purpose personal property used in conducting business of common carrier is to be taken as situated in county where principal office or place of business of carrier is located. *Ibid.*, § 6184.

Single mortgage of personal property embracing several things of such character, or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties is only valid in respect to things as to which it is duly filed; but copy of original mortgage may be authenticated by register of deeds in whose office filed, and such copy be filed in any other county with same effect as to property therein that the original could have been. *Ibid.*, § 6185.

Mortgage of personal property ceases to be valid against creditors of mortgagor and subsequent purchasers or incumbrancers in good faith after expiration of three years from filing thereof, except as hereinafter provided, unless within ninety days next preceding the expiration of such term a copy of mortgage and a statement of amount of existing debt for which mortgage or assignee claims lien, sworn to and subscribed by him, his agent or attorney, are filed anew in office of register of deeds in county where mortgage originally filed, and in like manner mortgage and statement of debt must be again filed every three years or it ceases to be valid against parties above mentioned; but mortgages of personal property belonging to street car companies, telephone companies, and telegraph companies need not be renewed. *Ibid.*, § 6186.

Mortgage of personal property must be signed by mortgagor in presence of two persons who must sign same as witnesses or acknowledge execution of same before some officer qualified to take acknowledgments, and no further proof is required to admit it to be filed. *Ibid.*, § 6187.

Register of deeds of each county must receive and file all such instruments offered to him and must not permit any of them to be removed from his office until canceled. Every such mortgage may be canceled by register of deeds upon presentation to him of receipt for the sum, money or property secured, or acknowledgment of satisfaction thereof signed by mortgagee. *Ibid.*, § 6188.

Mortgage is not to be deemed defectively filed by reason of any errors in copy filed which do not tend to mislead a party interested; and negligence of officer with whom mortgage filed does not prejudice rights of mortgagee. *Ibid.*, § 6189.

If mortgagor voluntarily removes or permits removal of mortgaged property from county where situated at time it was mortgaged, mortgagee may take possession and dispose of property as a pledge for payment of debt, though debt not due. *Ibid.*, § 6190.

No mortgage of ship or vessel, or part thereof, of United States is valid against any person other than mortgagor, his heirs and devisees and persons having actual notice thereof, unless mortgage recorded in office of collector of customs where vessel registered or enrolled. *Ibid.*, § 6191.

Sections 6182 to 6190 inclusive do not apply to mortgage of ship or vessel, or any part thereof, which is required as above by act of Congress to be recorded in a particular place or manner. *Ibid.*, § 6192.

It is unlawful for insurance company, or any agent or solicitor therefor within state, to take or procure to be taken upon property to be insured, or any other property, a chattel mortgage, securing payment of premium due or to become due, including policy fees, or any part thereof, unless such chattel mortgage is printed or written upon a separate and distinct paper from application, and no mortgage given in violation of the provisions of this section shall be valid or binding upon party executing same, but shall be void. *Ibid.*, § 4506.

In all cases where railroad equipment and rolling-stock may have been or shall be sold to any person, firm or corporation to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered on condition that the same may be used by person, firm or corporation purchasing, leasing, renting, hiring or receiving same, and that the title to same shall remain in vendor, lessor, renter, hirer or deliverer of same until price agreed upon or rent for such property is paid, such condition in regard to the title shall be valid as to subsequent purchasers in good faith, and creditors; but the term during which the installments or rents are to be paid shall not exceed ten years and such contract shall be in writing and acknowledged. Such contract shall be recorded in office of secretary of state and on each locomotive or car that may have been or may be sold or leased the name of vendor, or lessor, or assignee of vendor or lessor shall be marked in conspicuous place followed by word "owner" or "lessor," as case may be. *Ibid.*, §§ 4278, 4279.

When property is mortgaged for payment of money or performance of any contract or agreement, right and interest of mortgagor may be attached and sold on execution, and purchaser acquires all the right and interest of defendant. *Ibid.*, § 6949.

Right and interest of execution debtor in property mortgaged for payment of money or performance of any obligation may be sold on execution without taking possession or removing property to place of sale, but entire right and interest of debtor in all property covered by each separate mortgage shall be sold together as distinct parcel or thing and purchaser at sale shall acquire all right and interest of debtor. *Ibid.*, § 7107.

Every person having in his possession, or under his control, any personal property upon which there is known to him to be a subsisting lien, either

by operation of law or by contract, who wilfully destroys, removes from the county, conceals, sells or in any manner disposes of, otherwise than as prescribed by law, or materially injures such property or any part, without written consent of the then holder of lien, is guilty of misdemeanor, if value of property does not exceed one hundred dollars, or of felony, if it does. *Ibid.*, § 9442.

Any provision contained in any note, bond, mortgage or other evidence of debt for payment of an attorney fee in case of default in payment or of proceedings had to collect note, bond, or evidence of debt or to foreclose mortgage, is void. *Ibid.*, § 7175.

Mortgage of personal property containing power of sale upon default being made in condition of mortgage, authorizing exercise of such power, may be foreclosed in manner and upon notice provided in this article (on Foreclosure of Mortgages upon Personal Property, sections 7498 to 7511). *Ibid.*, § 7498.

When mortgagee or his assignee has commenced foreclosure by advertisement and it shall be made to appear by affidavit of mortgagor, agent or attorney, to satisfaction of judge of district court of county where mortgaged property situated that the mortgagee* has legal counterclaim or any other valid defense against collection of whole or any part of amount claimed to be due on mortgage, such judge may by order to that effect enjoin mortgagee or assignee from foreclosing mortgage by advertisement and direct that all further proceedings for foreclosure be had in district court properly having jurisdiction of subject matter; and for purpose of carrying out provisions of this section service may be made upon attorney or agent of mortgagee or assignee. *Ibid.*, § 7499.

Notice that mortgage will be foreclosed by sale of mortgaged property shall be published once and at least six days prior to sale in newspaper published at place of sale, if there is one, otherwise in any newspaper published in county where sale is to be made; and if no newspaper published in the county, notice shall be given by posting same in five public places in such county for at least ten days prior to sale. If mortgagor or his agent shall notify mortgagee or his agent in writing of time of seizure of property of his election that notice be given by posting instead of by publication, it shall be given accordingly as hereinbefore provided. *Ibid.*, § 7500.

Such notice must specify names of mortgagor and mortgagee and of assignee, if any; date of mortgage; nature of default and amount claimed to be due thereon at date of notice; description of mortgaged property, conforming substantially to that contained in mortgage; time and place of sale and name of party, agent or attorney foreclosing mortgage. *Ibid.*, § 7501.

All sales under this article shall be commenced between hours of twelve o'clock noon and four o'clock in afternoon of day specified in notice within thirty days after seizure of property, unless sale postponed. Any sale may be postponed one week by public announcement at time of postponement when no bidders, or when amount offered grossly inadequate, or upon request of mortgagor; but when mortgage on crops contains stipulation to that effect, it may be foreclosed by sale of crop, when harvested, in any usual market therefor, at any time, in usual manner, at market price thereof, in such market and without the notice hereinbefore provided; and usual and reasonable charges for such sale and for transportation of such grain to such market are proper expenses in such foreclosure. *Ibid.*, § 7502.

Within ten days after sale of mortgaged property as herein provided person making sale shall make out in writing full report under oath of all proceedings in foreclosure, specifying particularly property sold, amount received therefor, amount of costs and expenses itemized, and disposition made by him of proceeds of sale and shall file same in office of register of deeds of county where mortgage filed, which report shall be received in all courts as prima facie evidence of facts therein stated. *Ibid.*, § 7503.

* So in original.

Out of proceeds of sale person making sale shall pay (1) costs and expenses of foreclosure, (2) amount of mortgage debt to person entitled thereto, and (3) balance, if any, to owner of mortgaged property. *Ibid.*, § 7504.

Mortgagee, his assigns, or any other person may in good faith purchase property sold. *Ibid.*, § 7505.

Stipulation or agreement in chattel mortgage waiving provisions of this article is void. *Ibid.*, § 7506.

Fees for publication of notice under provisions of this article shall in no case exceed three dollars. No greater charge shall be valid for keeping live stock between date of seizure and date of sale or redemption than is now provided by law for keeping live stock when impounded. *Ibid.*, § 7507.

Boards of county commissioners of several counties shall at their regular quarterly meeting in April each year designate not less than five public places in their respective counties, which shall be the only market places for sale of chattels under provisions of this article, unless mortgagor and mortgagee agree upon and designate in writing another place in county as place of sale, in which case sale shall be made at place so designated, which written agreement or designation shall be attached to and filed with report of sale. Growing or harvested crops, grain in bulk, lumber, cord wood, buildings or other like articles may be sold under provisions of this article without moving same to one of market places herein provided for. *Ibid.*, § 7508.

Mortgagor of personal property, or his assignee, may redeem same from sale upon foreclosure of mortgage within five days after sale, exclusive of day of sale, by paying or tendering to owner of mortgage at time of sale, his agent or attorney, or person making sale, amount for which property sold with costs of sale and interest at rate of seven per cent per annum from date of sale. Mortgagor or his assignee, desiring to redeem property shall at time of sale give written notice to person making sale of his desire to make such redemption; otherwise he shall be deemed to have waived his right to do so. In case such notice served, person making sale shall retain possession of property sold until expiration of said five days and shall be entitled to reasonable expenses in caring for same. In case part only of property sold is redeemed the redemptioner shall pay or tender in addition to price for which such part was sold such proportion of costs of sale as said price bears to entire price of all the property sold and also the reasonable expense of caring for property redeemed and interest. *Ibid.*, § 7509.

When written notice of desire to redeem personal property as provided in last section is given, any person removing property from county where sold, prior to period herein provided for redemption without written consent of owner of property at time of sale is guilty of misdemeanor. *Ibid.*, § 7510.

Upon payment or tender of amount necessary to redeem mortgage, mortgagee, or person to whom same is paid or tendered, shall execute and deliver to redemptioner a certificate of such redemption, particularly describing property redeemed and mortgage under which same was sold, which certificate may be filed in office of register of deeds of county where mortgage filed and shall operate as a release of property from mortgage. *Ibid.*, § 7511.

An action may be maintained in district court to foreclose any lien upon personal property. *Ibid.*, § 7512.

If plaintiff not in possession of property, warrant may at time of issuing summons, or any time before judgment, be issued by clerk of court where action commenced, commanding sheriff to seize and safely keep same to abide final judgment in action. Such warrant may be issued upon filing verified complaint with clerk, setting forth cause of action in favor of plaintiff and against defendant for foreclosure of lien upon the property of which possession is sought. Sheriff must immediately execute warrant by seizing property and holding same until disposed of according to law. *Ibid.*, § 7513.

The warrant mentioned in the last section shall be attested and sealed in same manner as warrant of attachment, and shall be in substantially the form prescribed in this section. *Ibid.*, § 7514.

Before issuing warrant the clerk must require written undertaking on part of plaintiff with sufficient surety to effect that if defendant recovers judgment, plaintiff will pay all costs awarded to defendant, and all damages he may sustain by reason of any seizure under warrant, not exceeding sum named in undertaking, which must be at least the amount claimed in complaint and in no case less than one hundred dollars. *Ibid.*, § 7515.

In such action judgment for plaintiff must specify amount due on lien and direct sale of property to satisfy same and costs, by person appointed thereby, or officer designated therein, in manner provided for sale of personal property under execution; and the application by him of proceeds of sale, less his fees and expenses, to payment of judgment and costs. It may also provide for payment of surplus to owner of chattel and for safe-keeping of surplus, if necessary, until claimed by him. If defendant upon whom summons is personally served is liable for amount of lien, or for any part thereof, judgment may be entered against him accordingly. *Ibid.*, § 7516.

Provisions of chapter on attachment relative to rebonding, sale of perishable property and proceedings in case judgment is for defendant shall apply to proceedings under this article (on Actions to Foreclose Liens on Personal Property, §§ 7512-7518) so far as applicable. *Ibid.*, 7517.

This article does not affect any existing right or remedy to foreclose or satisfy lien upon personal property without action. *Ibid.*, § 7518.

576. Chattel Mortgage.

THIS MORTGAGE, made the day of , in the year 19 . by , of , by occupation a , mortgagor, to , of , by occupation , mortgagee.

WITNESSETH, that the mortgagor mortgages to the mortgagee the following described personal property, viz: [*description*]

AS SECURITY FOR THE PAYMENT to said , of the sum of dollars, with interest thereon, as expressed in promissory note dated on the day of , A. D. 19 , at , and described as follows, to wit:

One for dollars, payable , 19 , with interest from date at the rate of per cent per annum until paid.

One for dollars, payable , 19 , with interest from date at the rate of per cent per annum until paid.

And the said mortgagor hereby expressly represents, covenants and agrees that he is the sole, absolute, and exclusive owner of said property, and every part thereof, and that he has good right and lawful authority to mortgage the same in manner aforesaid; and the same is clear and free of all encumbrances whatsoever.

And I, the said , do hereby further covenant and agree, to and with the said , that in case of default made in the payment of the above mentioned sums of money or any part thereof or in case of any attempting to dispose of or remove from the said county of the aforesaid goods and chattels or any part thereof, or if the mortgagee shall at any time deem himself insecure, then, and in either or any of the above cases, it shall be lawful for said mortgagee, or his assigns, by himself or agent, to take immediate possession of said goods or chattels wherever found, the possession of these presents or a duly certified copy thereof being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising and

selling of said property, together with the attorney's fee provided for by section 7176 of the Revised Codes of North Dakota, the money remaining after paying said sum, if any, to be paid on demand to the said mortgagor. Said sale to take place at _____, in the county of _____, and state of North Dakota, after giving the public notice required by section 7501 of the Revised Codes of North Dakota.

AND I HEREBY FURTHER AUTHORIZE the person conducting the sale to adjourn the same if deemed in his opinion necessary, from time to time, until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected herewith, and to convey absolutely all my right and title therein. If from any cause said property shall fail to satisfy said debt, interest and charges, I covenant and agree to pay the deficiency.

WITNESS my hand this _____ day of _____, A. D. 19 ____.

[Signatures.]

Signed and delivered in presence of

[Signatures.]

577. Chattel Mortgage — Crop Clause.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, by occupation _____, of _____, county of _____, in the _____ of _____, for the purpose of securing the payment of _____ dollars and interest according to the conditions of promissory note .

One note, date _____, 19 ____, for \$ _____, dne _____, 19 ____.

One note, date _____, 19 ____, for \$ _____, due _____, 19 ____.

hereby sell and mortgage unto _____, of _____ and _____ assigns, the following described property, now in my possession, owned by me, and free from encumbrance, to wit: [description] And also all crops of every name, nature and description which have been or may hereafter be sown, grown, planted, cultivated or harvested during the year 19 ____ on the following described real estate; to wit: [description]

And in case the said crops are not properly sown, planted, cultivated, harvested, threshed or cared for, the said mortgagee has the right to enter on said land, and do all that is necessary to properly put in, harvest, thresh and market such crops, and reimburse himself for all labor and expense out of the proceeds thereof, the portion remaining to be applied on the debt hereby secured.

PROVIDED, that if the undersigned shall pay said debt according to the terms of said note then this mortgage shall be void. AND IT IS HEREBY AGREED, that if any attempt be made to remove the said property from the county where the same is now situated, or dispose of the same, or if the undersigned shall abandon said described property, or fail, neglect or refuse to take reasonable or proper care of the same, the whole sum secured hereby shall thereupon become due and payable. AND IT IS FURTHER AGREED, that if default is made in the payment of said debt, or any part thereof, or if at any time the said mortgagee or _____ assigns, shall deem said debt unsafe or insecure, or whenever _____ shall choose to do so, then he hereby authorized, either by _____ or _____ agents, to enter upon the premises, where said property may be, and take, remove and hold the same until said debt

becomes due, either by the terms of said note or this mortgage, and to sell said property as provided by law, for the sale of mortgaged personal property, and out of the proceeds of such sale to retain the amount of said debt with expense of taking, removing, caring for, holding and selling said property, rendering to the undersigned the surplus, after the whole of said debt, with the expenses aforesaid, shall have been paid. And it is further agreed, that this mortgage may be foreclosed as to the crops hereinbefore described, after the indebtedness secured hereby becomes due, by a sale of such crop when harvested, in any usual market therefor, at any time in the usual manner, at the market price thereof in such market, and without the notice provided by law, and that the usual and reasonable charges for such sale and for the transportation of such grain to such market shall be deemed proper expenses in such foreclosures. And the undersigned hereby waives notice of such sale and waives demand of payment of said debt or the performance of any of the conditions of this mortgage on part, and authorizes the mortgagee hereunder, or assigns, to purchase any or all of said property at such sale.

The delivery of this mortgage or copy thereof to any attorney, with instructions to foreclose the same, shall be understood and construed to be the commencement of foreclosure, and any costs or expenses incurred in good faith in any attempt to take or sell said property or foreclose this mortgage shall be paid by the undersigned, and this mortgage shall stand as security therefor.

WITNESS hand this day of , 19 .

[Signatures.]

Signed by said mortgagor in our presence:

[Signatures.]

Two witnesses are necessary.

578. Chattel Mortgage — Range Stock.

THE UNDERSIGNED, of , county of , state of North Dakota, for the purpose of securing the payment of my several certain promissory notes payable to , North Dakota, to wit:

One note for \$, dated , due , with interest at per cent. from date until paid.

One note for \$, dated , due , with interest at per cent. from date until paid.

Which notes I justly owe and hereby promise and agree to pay, do hereby grant, bargain, sell, mortgage and convey to the said , successors or assigns, the following described personal property, now owned by me and in my possession in county, North Dakota, to wit:

| Number | Kind of Property | Age | Color | Weight | Name | Marks or Brands | From whom Obtained | Value |
|--------|------------------|-----|-------|--------|------|-----------------|--------------------|-------|
| | | | | | | | | |

And all increase of the above described live stock; also all the crops of every name, nature and description, now standing, and grown, and to be sown,

grown, harvested and threshed during the year 19 , upon the of section , township , range , county of , state of North Dakota, said real estate being owned by , in my possession and control, this mortgage being the first lien on all property above described , it being hereby expressly agreed that this mortgage may be foreclosed by a sale of such crop, when harvested, in any usual market therefor, at any time, in the usual manner, at the market price thereof, in such market, and without notice of foreclosure:

PROVIDED, HOWEVER, if I shall pay said debt and interest, then this mortgage shall be void; but if default be made in the payment of said debt, according to the conditions of said notes, or if during the lien of this mortgage I attempt to sell, remove, or otherwise dispose of said mortgaged property, or any part thereof, or if I shall abuse or misuse said mortgaged property, or any part thereof, or shall fail to take reasonable or proper care thereof, whereby the same or any part thereof shall become depreciated in condition or value, or if said property or any part thereof shall be seized under a writ of attachment or by virtue of an execution against me; or if at any time the said mortgagees shall, with reasonable cause, deem themselves insecure, then and thereupon the said mortgagees, or their agents, are hereby authorized to declare the whole debt due, and to enter upon the premises whereon said property or any part thereof may be, and take, remove and sell the same in the manner provided by statute, and out of the proceeds the said mortgagees are herein and hereby authorized and empowered to retain such amount as shall be sufficient to satisfy the said entire indebtedness hereby secured with interest thereon to the time of such sale, such expenses as shall have been necessarily incurred in the seizure, keeping and sale of said property, together with and in addition thereto the statutory attorney's fees, returning to me or my representatives any surplus derived from the sale of said property after having satisfied the several amounts aforesaid; and it is agreed that the said mortgagees retain in force all mortgages heretofore given securing the same or any part of the indebtedness hereby secured. It is hereby further agreed that I am to remain in peaceful possession of said property until default in the conditions of this mortgage, and in consideration thereof I agree to keep the same in good condition at my own cost and expense.

IN WITNESS WHEREOF, I have hereunto affixed my hand this day of
 , 19 .

[Signatures]

Residence on Sec T R .

In presence of:

[Signatures.]

P. O. Address , N. D.

Two witnesses necessary unless acknowledged.

OHIO.

A mortgage or conveyance intended to operate as a mortgage of goods and chattels, which is not accompanied by an immediate delivery and followed by an actual and continued change of possession of goods mortgaged shall be void as against creditors of the mortgagor, subsequent purchasers,

and mortgagees in good faith, unless the mortgage, or a true copy thereof, be forthwith deposited with the county recorder where mortgagor resides at the time of the execution thereof, if a resident of the state, and if not such resident then with the county recorder of the county in which property so mortgaged is situated, at the time of execution of instrument. Annotated Statutes of 1908, §§ 4150, 4151.

The mortgagee, his agent or attorney, shall, before the instrument is filed, state therein under oath the amount of the claim and that it is just and unpaid, if given to secure the payment of a sum of money only, and if given to indemnify the mortgagee against a liability as surety for the mortgagor, such sworn statement shall set forth such liability and that the instrument was taken in good faith to indemnify against loss that may result therefrom. *Ibid.*, § 4154.

Chattel mortgages must be renewed within thirty days next preceding the expiration of term of one year, by filing in office where original was filed a true copy of such mortgage, together with a statement, verified as provided in Section 4154, together with a statement exhibiting the interest of the mortgagee in property at time last aforesaid, claimed by virtue of such mortgage. *Ibid.*, § 4155.

No chattel mortgage on the necessary household goods, wearing apparel or mechanic's tools of any person or family, except purchase money mortgages thereof, shall be foreclosed except in a court of record, and no such household goods, wearing apparel or mechanic's tools, covered by a chattel mortgage, shall be seized or taken out of the possession of the mortgagor before foreclosure, except by sheriff or constable, and then only after the mortgagee or his agent has presented an affidavit to the clerk of some court of record or justice of the peace, setting forth that the mortgage is due, or that the mortgagee is in danger of losing his security, giving the facts upon which he relies and after obtaining an order from such judge or justice of the peace, directing such sheriff or constable to seize such personal property and goods and hold them subject to the order of the court; any stipulation of such mortgage to the contrary notwithstanding. But this does not apply to the sale of furniture or other household goods by regular dealers. If the mortgagee fails to recover the full amount on his petition, the court shall adjudge the costs against him. *Ibid.*, § 4155-1.

In all cases where personal property is sold to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered to another on condition that the same shall belong to the person purchasing, leasing, renting, hiring or receiving the same whenever the amount paid shall be a certain sum, or the value of such property, title to remain in the vendor &c., until consideration paid &c., the contract to be valid against subsequent purchasers and mortgagees in good faith and creditors must be in writing, signed by the purchaser, lessor, renter, hirer or receiver, with a statement thereon under oath by person so selling, leasing or delivering such property, his agent or attorney, of the amount of the claim, or a true copy thereof, with an affidavit that same is a copy deposited with county recorder of county where person signing the instrument resides at time of the execution thereof, if a resident, and if a non-resident then with county recorder of county in which said property is situated at time of the execution. *Ibid.*, § 4155-2.

Whenever such property, except machinery, equipment and supplies for railroads and contractors, and for manufacturing brick, cement and tiling, and for quarrying and mining purposes, is so sold, leased, rented, hired or delivered, the persons selling, leasing, renting, hiring or delivering, or their assigns or agents or servants, cannot take possession of the property without tendering or refunding to the purchaser, lessee, renter or hirer, or any party receiving the same from the vendor, the sum or sums of money so paid, after deducting therefrom a reasonable compensation for the use of

such property, not exceeding fifty per cent. of the amount so paid, anything in the contract to the contrary notwithstanding, and whether such condition be expressed in such contract or not, unless such property has been broken or actually damaged, and then a reasonable compensation for such breakage or damage shall be allowed, provided that vendor shall not be required to tender or refund any part of the amount so paid, unless said amount so paid to the vendor exceeds twenty-five per cent. of the contract price. *Ibid.*, § 4155-3.

In 1902 an act was passed declaring disposition of entire stock of merchandise in bulk &c. fraudulent and void, but this act has been held unconstitutional.

No contract of, or for sale of railroad equipment, rolling stock, or other personal property (to be used in or about operation of any railroad), by terms of which the purchase money, in whole or part, is to be paid in future, and wherein it is stipulated or conditioned that the title to property so sold shall not vest in vendee, but shall remain in vendor until purchase money paid, shall be valid against creditors or innocent purchasers for value, unless recorded in office of secretary of state, or copy filed in said office and when contract so recorded, or copy so filed, title to property so sold, or contracted to be sold, shall not vest in vendee, but shall remain in vendor until purchase money paid, and such stipulation or condition shall be valid, notwithstanding delivery of property to and its possession by vendee. *Ibid.*, § 3378a.

In written contract for renting, leasing, or hiring of such property (to be used as aforesaid), it may be stipulated that there be a conditional sale of property at termination of renting, leasing, or hiring, and that rental reserved shall, as paid, or when paid in full, be treated as purchase money; and in such contract it may be stipulated that the title to such property shall remain in lessor or vendor until purchase money paid, notwithstanding delivery to and possession by the other party; subject, however, to requirement as to recording or filing contained in foregoing section. *Ibid.*, § 3378b.

Secretary of state, when so requested, and upon being paid the proper fees, shall record any such contract, and shall file in his office a copy, when same delivered to him for that purpose. *Ibid.*, § 3378c.

The provisions of sections 3378(a), 3378(b), and 3378(c), shall extend and apply, not only to contracts made with a railroad company, as vendee or lessee, but also to all contracts which may be made with any corporation, company or person, as vendee or lessee, by which any such corporation, company, or person shall undertake to purchase, rent, lease, or hire any railroad equipment, cars, rolling stock, or other personal property, designed for use on, or in connection with, a railroad or railroads, in this or other states. *Ibid.*, § 3378d.

579. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of
to paid by the receipt whereof is hereby acknowledged, do
hereby bargain, sell, transfer and convey to the said executors, adminis-
trators, and assigns, the goods, chattels, and personal property described as
follows, to wit: [*description*]

AND THE SAID MORTGAGOR, for and for heirs, executors, and
administrators, hereby covenant with the said mortgagee executors,
administrators, and assigns, that the true and lawful owner of the
hereinbefore described personal property, and ha full power to sell, convey,
and encumber the same; that the title hereby conveyed is clear, free, and

unencumbered; and further, that _____ will warrant and defend the same against all claim or claims of all persons whomsoever.

AND THE SAID MORTGAGOR FURTHER COVENANT that _____ will insure the said personal property for not less than _____ dollars, and keep the same insured during the continuance of this mortgage, and if _____ neglect or fail to do so, then the said mortgagee may insure the same at the expense of the said mortgagor ; and in case of loss, if any, payment shall be made to the said mortgagee for the uses and purposes herein mentioned.

AND THE SAID MORTGAGOR FURTHER COVENANT that on default of payment, or any sale or attempt to sell said goods, chattels, or personal property, or any part thereof, or to remove the same, or any part thereof, from the county, or from their location, or upon any seizure of the same, or any part thereof, by process of law, or upon any failure to comply with the said provisions as to insurance, then the said mortgagee _____ legal representatives, or assigns, may take the same into _____ possession.

PROVIDED, NEVERTHELESS, that [describe terms of loan] then this mortgage to be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said _____ ha hereunto set _____ hand this day of _____ , A. D. 19 _____ .

[Signatures.]

AFFIDAVIT.

(Mortgage to secure money only.)

STATE OF _____ , }
County of _____ , } ss.

AFFIANT under oath, states that he is¹ _____ the within named mortgagee ; that the said mortgagee ha a valid claim against the within named mortgagor amounting to _____ dollars and _____ cents; that the said claim is just and unpaid; and that the foregoing mortgage is given to secure the same.

[Signature.]

Sworn to and subscribed before me,
this _____ day of _____ , 19 _____ .

[Signature.]

AFFIDAVIT.

(Mortgage to indemnify mortgagee as surety.)

STATE OF _____ }
County of _____ } ss.

AFFIANT, under oath, states that he is¹ _____ the within named mortgagee ; that on the _____ day of _____ , 19 _____ , the said mortgagee became surety for the within named mortgagor on a certain² _____ executed by³

¹ If the affidavit is made by an agent or attorney of the mortgagee, insert here "the agent of" or "the attorney of."

² Here say "note," "bond" or other name of the instrument, according to the fact.

³ Here give the name of the maker and any other facts necessary to describe and identify the obligation upon which the mortgagee is surety.

and that the foregoing mortgage is taken in good faith to indemnify said mortgagee against any loss that may result to therefrom.

[Signature.]

Sworn to and subscribed before me,
this day of , 19 .

[Signature.]

STATEMENT ON RE-FILED MORTGAGE.

STATE OF),
County of) ss.

AFFIANT, under oath, states that he is¹ within named mortgagee ; that said mortgagee ha by virtue of the within mortgage an interest in the property therein described, now amounting to² 100 dollars with interest from² 19 , ³ that said claim is just and unpaid, and that said mortgage was taken in good faith, and is still held to secure the same.

[Signature.]

Sworn to and subscribed before me,
this day of , 19 .

[Signature.]

OKLAHOMA.

Mortgage of personal property may be made in substantially following form:

580. Chattel Mortgage, Statutory Form.

This mortgage, made the day of , in the year , by A. B., of , by occupation a , mortgagor, to C. D., of , by occupation a , mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [*here describe the property*], as security for the payment to him of dollars, on [or, before], the day of in year , with interest thereon [or, security for the payment of a note or obligation, *describing it, etc.*]

A. B.

Compiled Laws 1909, § 4415.

Mortgagee of personal property, when debt which mortgage executed to secure is due may foreclose mortgagor's right of redemption by sale of property, made in manner and upon notice prescribed by article on pledge, or by proceedings under civil procedure; but when mortgagee, agent or assignee has commenced foreclosure by advertisement, and it is made to appear by affidavit of mortgagor, agent or attorney, to satisfaction of judge of district court of county where property situated that mortgagor has legal counterclaim or other valid defense against collection of whole or part of amount claimed to be due on mortgage, such judge may, by order to that effect, enjoin mortgagee, agent or assignee, from foreclosing mortgage by advertisement, and direct that all further proceedings for foreclosure of mortgage be had in court properly having jurisdiction of subject-matter. *Ibid.*, § 4416.

¹ See note 1 on preceding page.

² Calculate interest to date of affidavit and add to principal and fill this blank with the aggregate sum, or give the amount, with the date from which interest is due as "One hundred dollars with interest from June 30, 1888."

³ If the mortgage is given to indemnify a surety, insert here "*to indemnify said mortgagee as surety, as stated in said mortgage and original affidavit*".

Chattel mortgage, when conditions of same broken, may be foreclosed by sale of property mortgaged upon the notice and in the manner following. The notice shall contain names of mortgagor and mortgagee, and assignor,* if any; date of mortgage; nature of default and amount claimed to be due thereon to date of notice; description of property, conforming substantially to that in mortgage; time and place of sale; name of party, agent or attorney foreclosing mortgage. *Ibid.*, § 4417.

Such notice shall be posted in five public places in county where property is to be sold, at least ten days before time therein specified for sale. *Ibid.*, § 4418.

Mortgagee, assigns or any other person may in good faith purchase property sold. *Ibid.*, § 4419.

Attorney fee specified in mortgage may be taxed and made part of costs of foreclosure, in case mortgage foreclosed by attorney of record of state, and name of such attorney appear as attorney on notice of sale. *Ibid.*, § 4420.

Sections 4417 to 4420 shall not be construed to affect the provisions relating to foreclosures of chattel mortgages by action. *Ibid.*, § 4421.

Mortgage of personal property is void against creditors of mortgagor, subsequent purchasers, and incumbrancers of property in good faith, for value, unless original or authenticated copy be filed by depositing same in office of register of deeds of county where property, or part thereof, is then situated; and mortgage of personal property situated in portions of State attached to organized county for judicial purposes, is void against creditors of mortgagor, subsequent purchaser, or incumbrancers of property in good faith for value, unless original or authenticated copy deposited and filed in office of register of deeds to which territory where property situated is attached for judicial purposes. *Ibid.*, § 4422.

Filing of mortgage of personal property in conformity to provisions of this article (on Mortgages, §§ 4405-4434) is notice thereof to all subsequent purchasers and incumbrancers of so much of property as is at time mentioned in preceding section stated* in county or counties where mortgage or authenticated copy filed. *Ibid.*, § 4423.

For purposes of this article property in transit from possession of mortgagee to county of residence of mortgagor, or to a location for use, is, during reasonable time for transportation, to be taken as situated in county where mortgagor resides, or where it is intended to be used. For like purpose personal property used in conducting business of common carrier is to be taken as situated in county where principal office or place of business of carrier is located. *Ibid.*, § 4424.

A single mortgage of personal property, embracing several things of such character or so situated that by provisions of this article, separate mortgages would be required to be filed in different counties, is only valid in respect to things as to which duly filed; but copy of original mortgage may be authenticated by register of deeds in whose office filed, and such copy may be filed in any other county with same effect as to property therein that the original could have been. *Ibid.*, § 4425.

Mortgage of personal property ceases to be valid against creditors of mortgagor, and subsequent purchasers or incumbrancers in good faith after expiration of three years from filing, unless within thirty days next preceding expiration of such term, copy of mortgage and statement of amount of existing debt for which mortgagee or assignee claims lien, sworn to and subscribed by him, his agent or attorney, are filed anew in office of register of deeds in county where mortgagor then resides, and in like manner mortgage and statement of debt must be again filed every three years, or it ceases to be valid against parties above mentioned. *Ibid.*, § 4426.

Mortgage of personal property must be signed by mortgagor. Signatures may either be attested by acknowledgment before person authorized to take

* So in original.

acknowledgment of deeds, or it may be signed and validated by signature of two persons not interested therein. Mortgages signed in presence of two witnesses or acknowledged before officer as herein provided, shall be duly admitted of record. *Ibid.*, § 4427.

Register of deeds of each county must receive and file all such instruments as are offered to him and must not permit any of them to be removed from his office until canceled. Every such mortgage may be canceled by register of deeds upon presentation to him of receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof, signed by mortgagee. *Ibid.*, § 4428.

Mortgage is not to be deemed defectively filed by reason of errors in copy filed, which do not tend to mislead party interested; and negligence of officer with whom mortgage filed does not prejudice rights of mortgagee. *Ibid.*, § 4429.

If mortgagor voluntarily removes or permits removal of mortgaged property from county where situated when mortgaged, mortgagee may take possession and dispose of property as pledge for payment of debt, though not due. *Ibid.*, § 4430.

Personal property mortgaged may be taken under attachment or execution issued at suit of creditor of mortgagor. *Ibid.*, § 4431.

Before property so taken officer, on execution, or attachment creditor, must pay or tender to mortgagee, amount of mortgage debt and interest, or must deposit amount thereof with county treasurer, payable to order of mortgagee. *Ibid.*, § 4432.

Any person in State indebted to other persons may prefer one or more of such creditors in good faith to secure a valid debt, which preference may be by mortgages, either real or chattel, and if received by creditor in good faith, such mortgage is valid in hands of mortgagee and is a preference to extent thereof, subject to laws relating to filing and recording of mortgages. *Ibid.*, § 4434.

Any and all instruments in writing, or promissory notes, evidencing the conditional sale of personal property and retaining the title in vendor until purchase price paid, are void against innocent purchasers, or creditors of vendee, unless original or copy deposited in office of register of deeds in county where property kept, and when so deposited are subject to law applicable to filing of chattel mortgages; and any conditional, verbal sale of personal property reserving to vendor any title in property sold is void as to creditors and innocent purchasers for value. *Ibid.*, § 7911.

In any contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that the title to the property sold or contracted to be sold, although possession delivered immediately or subsequently, shall not vest in purchaser until purchase price paid, or that seller shall have lien for purchase money. And in any contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at termination of contract, and rentals or amounts to be received under contract may, as paid, be treated as purchase money and title shall not vest in lessee or bailee until purchase money paid and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; *Provided*, That such contract shall be valid* as against any subsequent bona fide purchaser for value and without notice, unless evidenced by an instrument executed by parties and acknowledged by vendee or lessee or bailee as case may be, or proved like deeds, which instrument shall be filed for record in office of secretary of state, and unless each locomotive engine or cars so sold, leased or hired or contracted to be sold, leased or hired as aforesaid have name of vendor, lessor or bailor plainly marked on each side, followed by word "owner" or "lessor" or "bailor" as case may be. These contracts shall be recorded by secretary of state in book of records to be kept for that purpose. And on payment of purchase money and performance of

* So in original.

terms and conditions stipulated in contract a declaration in writing to that effect may be made by vendor or lessor or bailor or assignee, on margin of record of contract duly attested, or by separate instrument acknowledged by vendor, lessor or bailor or assignee, and recorded as aforesaid. *Ibid.*, §§ 7913, 7914.

Contracts of mortgages, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter (on Liens, chap. 60, §§ 4112 to 4155). *Ibid.*, § 4116.

Notwithstanding agreement to contrary, a lien or contract for lien transfers no title to property subject to the lien. *Ibid.*, § 4121.

All contracts for forfeiture of property subject to lien, in satisfaction of obligation secured thereby, and all contracts in restraint of right of redemption from lien, are void, except in case specified in section 3023 (which permits owner of thing found to exonerate himself from claims of finder by surrendering it to him in satisfaction thereof). *Ibid.*, § 4122.

One who holds property by virtue of lien thereon, is not entitled to compensation from owner for trouble or expense which he incurs respecting it, except to same extent as borrower, under sections 3034 and 3035. *Ibid.*, § 4125.

Borrower of thing for use must bear all its expenses during loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from lender, who may exonerate himself by surrendering the thing to borrower. *Ibid.*, § 3034.

Lender of thing for use must indemnify borrower for damages caused by defects or vices in it, which he knew at time of lending, and concealed from borrower. *Ibid.*, § 3035.

Other things being equal, different liens upon same property have priority according to time of creation, except in cases of bottomry and respondentia. *Ibid.*, § 4126.

Where one has lien upon several things, and other persons have subordinate liens upon or interests in, some but not all of same things, person having prior lien, if he can do so without risk of loss to himself, or injustice to other persons, must resort to property in following order, on demand of any party interested:

1. To things upon which he has exclusive lien.
2. To things subject to fewest subordinate liens.
3. In like manner inversely to number of subordinate liens upon same thing; and,
4. When several things are within one of foregoing classes, and subject to same number of liens, resort must be had,
 - (a) To things not transferred since prior lien created.
 - (b) To things so transferred without valuable consideration; and,
 - (c) To things so transferred for valuable consideration. *Ibid.*, § 4128.

Every person having interest in property subject to lien, has right to redeem it from lien, at any time after claim due, and before right of redemption foreclosed. *Ibid.*, § 4129.

One who has lien, inferior to another upon same property, has right: 1. To redeem property in same manner as owner might, from superior lien; 2. To be subrogated to all benefits of superior lien when necessary for protection of his interests, upon satisfying claim secured thereby. *Ibid.*, § 4130.

Redemption from lien is made by performing, or offering to perform, act for whose performance it is security, and paying, or offering to pay, damages, if any, to which holder of lien is entitled for delay. *Ibid.*, § 4131.

Sale of any property on which there is lien, in satisfaction of claim secured thereby, or, in case of personal property, its wrongful conversion by person holding lien, extinguishes lien thereon. *Ibid.*, § 4133.

Lien is extinguished by mere lapse of time within which, under provisions of civil procedure, action can be brought upon principal obligation. *Ibid.*, § 4134.

Partial performance of act secured by lien does not extinguish lien upon any part of property subject thereto, even if divisible. *Ibid.*, § 4135.

An agreement may be made to create lien upon property not yet acquired by party agreeing to give lien, or not yet in existence. In such case the lien agreed for attaches from time when party agreeing to give it acquires interest in thing to extent of such interest. *Ibid.*, § 4119.

Lien may be created by contract, to take immediate effect, as security for performance of obligation not then in existence. *Ibid.*, § 4120.

A special lien is one which the holder can enforce only as security for performance of particular act or obligation, and of such obligations as may be incidental thereto. Where holder of special lien is compelled to satisfy prior lien for his own protection, he may enforce payment of amount so paid by him, as part of claim for which his own lien exists. *Ibid.*, § 4115.

In action to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgments shall be rendered for amount or amounts due, as well to plaintiff as other parties to action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of property charged and application of proceeds, or such application may be reserved for further order of court; and court shall tax the costs, attorney's fees, and expenses which may accrue in the action, and apportion same among parties according to respective interests, to be collected on the order of sale or sales issued thereon. *Ibid.*, § 5921.

OREGON.

Every sale of personal property, capable of immediate delivery to purchaser, and every assignment of such property, by way of mortgage or security, or upon any condition whatever, unless same accompanied by immediate delivery, and followed by continued change of possession, creates presumption of fraud, as against creditors of seller or assignor, during his possession, or as against subsequent purchasers in good faith and for valuable consideration, disputable only by making it appear on part of person claiming under such sale or assignment that same made in good faith, for sufficient consideration, and without intent to defraud such creditors or purchasers; but presumption herein specified does not exist in case of mortgage duly filed or recorded as provided by law. Annotated Codes and Statutes to 1902, § 788, subd. 40.

If bailee, with or without hire, shall embezzle or wrongfully convert to his use, or shall secrete, with intent to convert to his use, or shall fail, neglect, or refuse to deliver, keep, or account for, according to nature of his trust, any money or property of another delivered or intrusted to his care or control, and which may be the subject of larceny, such bailee, upon conviction thereof, is guilty of larceny; and if such bailee receive grain of any kind from different bailors, and mix same and store it together in bulk, in such case, in an indictment charging bailee so mixing and storing grain with committing, with reference to said grain, the crime defined and made penal in this section, it shall not be necessary to charge in said indictment or prove on the trial that the ownership of said grain is in more than one of said bailors; and every mortgagor of personal property having possession of property mortgaged shall be deemed a bailee within the provisions of this section. *Ibid.*, § 1806.

If any person shall, by false pretenses or any privy or false token, and with intent to defraud, obtain, or attempt to obtain from any other person, any money or property, or shall obtain or attempt to obtain with like intent the signature of any person to any writing the false making whereof would be punishable as forgery, such person, upon conviction thereof, shall be punished by imprisonment in penitentiary. The making of bill of sale, or assignment, or mortgage of personal property by any person not the owner thereof, for purpose of obtaining money or credit, or to secure an existing indebtedness, shall be deemed a false pretense within meaning of this section. *Ibid.*, § 1812.

Any mortgage, deed of trust, conveyance, or other instrument of writing intended to operate as mortgage of personal property alone, or with real property, shall be executed, witnessed, and acknowledged, or certified or proved, in same manner as conveyance of real property. *Ibid.*, § 5630.

Such instrument may be recorded in office of recorder of conveyances in counties where such office established by law (and in other counties in office of county clerk) of county where the mortgaged property situated, and of such other county or counties as mortgagee may elect, in book of record kept exclusively for that purpose; but in case the instrument be intended to operate as mortgage of real property, as well as a mortgage of personal property, it may be recorded in records of mortgages of real property, and such county clerk or recorder of conveyances, in whose office same is recorded, shall index same in the general index of mortgages of personal property or chattel mortgages as well as in general index of mortgages of real property, and same need not be recorded in records of mortgages of personal property. *Ibid.*, § 5631.

When mortgaged personal property is removed from county or counties where mortgage recorded, lien of mortgage is suspended as to subsequent purchasers and mortgagees thereof in good faith and for valuable consideration from and after thirty days from time of such removal, unless within said thirty days mortgage is recorded (as provided in section 5631) in county to which property is removed, or mortgagee has taken possession of property; when such mortgage lien shall remain so suspended until mortgage recorded in county to which property removed, or until property returned to county in which mortgage recorded, or until mortgagee takes possession of property: but mortgagee of personal property may have his mortgage recorded in one or more counties, as he may elect, and mortgage shall be lien upon mortgaged property while same is in any county in which same recorded, and mortgage of or on vessel or boat, or any part, over twenty tons burden, shall be recorded in office of collector of customs where registered, enrolled, or licensed, and need not be recorded elsewhere, and such mortgage shall be and continue a lien on same. *Ibid.*, § 5632.

Every mortgage, deed of trust, conveyance, or instrument of writing intended to operate as mortgage of personal property, either alone or with real property, not accompanied with immediate delivery and followed by continued change of possession of personal property mortgaged, or not recorded as provided in section 5631, is void as against subsequent purchasers and mortgagees in good faith and for valuable consideration of same personal property, or any portion thereof. *Ibid.*, § 5633.

The provisions of sections 5357, 5360, 5366, 5369, 5367, 5362, 5363, and 5368 shall apply to mortgages, deeds of trust, conveyances, or other instruments of writing intended to operate as a mortgage of personal property alone, or with real property. *Ibid.*, § 5634.

Mortgages may be assigned or transferred by instrument in writing, executed and acknowledged like deeds and mortgages of real estate, and recorded in records of mortgages of county where land situated. *Ibid.*, § 5362.

Assignment of mortgage shall be recorded at full length, and a reference made to book and page containing such assignment upon margin of record of mortgage. *Ibid.*, § 5363.

Mortgage shall be discharged upon record thereof, by county clerk in whose custody it shall be, whenever certificate is presented to him executed by mortgagee, personal representatives or assigns, acknowledged or proved and certified as prescribed to entitle conveyances to be recorded, specifying such mortgage paid or otherwise satisfied or discharged. Such certificate, and the proof or acknowledgment, shall be recorded at full length, and reference made to book and page containing such record, in the minute of discharge of such mortgage by county clerk upon record thereof. *Ibid.*, § 5366.

When promissory note secured by mortgage on real property is transferred by indorsement without formal assignment of mortgage, and mortgage duly

recorded, the same, upon payments* of note, may be discharged of record by owner and holder of note making and filing with recorder of conveyances or county clerk in whose custody record of mortgage may be, a certificate, verified by his oath, declaring, in substance, that he is owner and holder of note secured by said mortgage by indorsement of mortgagee, and that such note fully paid, and proving fact to satisfaction of recorder of conveyances or county clerk, and also delivering original note to such officer. Upon receiving certificate and note, recorder of conveyances or county clerk shall enter them in full length upon record book of mortgages, and a reference shall be made to book and page containing such record in the minute of discharge of mortgage made upon record thereof, and note in index of mortgages the discharge thereof, and such entry shall have same effect as deed of release of mortgagee duly acknowledged and recorded. Holder and owner of note shall be deemed and held to be personal representative of mortgagee under provisions of section 5369. *Ibid.*, § 5367.

No mortgage upon real estate in any county in state shall be satisfied or released so as to free property from lien of mortgage, except by person appearing upon records of county where mortgage is recorded to be owner thereof, and satisfaction or release of mortgage by party appearing upon record to be owner and holder of mortgage shall operate to free land described in mortgage from lien of mortgage, so far as regards all subsequent purchasers and incumbrances* for value, and without notice. *Ibid.*, § 5368.

If mortgagee, or personal representative or assignee, as case may be, after full performance of condition of mortgage, whether before or after breach, shall, for space of ten days after being thereto requested, and after tender of reasonable charges, refuse or neglect to discharge same as provided in this chapter (of Deeds and other Instruments affecting Real Property, §§ 5333-5386), or to execute and acknowledge certificate of discharge or release thereof, he shall be liable to mortgagor, heirs or assigns, in sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in action at law. *Ibid.*, § 5369.

Whenever condition of mortgage of goods and chattels shall be broken, mortgagee shall be entitled to immediate possession, and when after breach of condition possession of the property is not delivered up to mortgagee upon demand by him or by any person duly authorized by him to make such demand of person or persons having such property in possession, mortgagee may recover possession of property in manner provided by chapter II of title IV of Code of Civil Procedure (chapter on Claim and Delivery). *Ibid.*, § 5636.

Whenever in any mortgage of goods and chattels parties to mortgage have provided manner in which it may be foreclosed, such mortgage, upon breach of the conditions thereof, may be foreclosed in manner therein provided, and not otherwise; and if in such mortgage the manner in which same may be foreclosed shall not be provided, then upon breach of the conditions thereof, in case the consideration of mortgage shall not exceed sum of five hundred dollars, the same may be foreclosed, and the property sold by sheriff or any constable of county where mortgage filed, upon written request of mortgagee, agent, or attorney, upon such notice, and in manner provided by law for sale of personal property upon execution; and if the consideration of mortgage shall exceed sum of five hundred dollars, same may be foreclosed by action at law in circuit court of county where mortgage filed. *Ibid.*, § 5637.

Upon sale of any mortgaged property as provided by section 5637, sheriff or constable making same shall forthwith make his return of his proceedings to clerk of county where sale shall have been had, and after deducting costs and expenses of sale, and satisfying mortgage in full, he shall deposit balance of proceeds, if any, with such clerk, subject to order of mortgagor. *Ibid.*, § 5638.

* So in original.

Lien upon real or personal property, other than that of a judgment or decree, whether created by mortgage or otherwise, shall be foreclosed, and property adjudged to be sold to satisfy debt secured thereby by a suit. In such suit, in addition to decree of foreclosure and sale, if it appear a promissory note or other personal obligation for payment of debt has been given by mortgagor or other lien debtor, or by any other person as principal or otherwise, court shall also decree a recovery of amount of such debt against such person or persons, as case may be, as in case of ordinary decree for recovery of money. *Ibid.*, § 423.

Any person having lien subsequent to plaintiff upon same property or part thereof, or who has given a promissory note or other personal obligation for payment of debt or part thereof, secured by mortgage or other lien which is the subject of the suit, shall be made a defendant in suit, and any person having a prior lien may be made defendant at option of plaintiff, or by order of court when deemed necessary. *Ibid.*, § 424.

When it is adjudged that any of defendants have lien upon property, court shall make like decree in relation thereto, and debt secured thereby, as if such defendant were a plaintiff in suit; and when decree is given foreclosing two or more liens upon same property or any portion thereof in favor of different persons not united in interest, such decree shall determine and specify order of time, according to their priority, in which the debts secured by such liens shall be satisfied out of proceeds of sale of property. *Ibid.*, § 425.

Decree may be enforced by execution as ordinary decree for recovery of money, except as in this section otherwise or specially provided:—

1. When decree of foreclosure and sale is given, execution may issue thereon against property adjudged to be sold. If decree in favor of plaintiff only, execution may issue as in ordinary cases, but if in favor of different persons, not united in interest, it shall issue upon joint request of such persons or upon order of court or judge thereof on motion of either of them;

2. When decree is also against defendants or any one of them in person, and proceeds of sale of property upon which lien foreclosed not sufficient to satisfy decrees as to sum remaining unsatisfied, decree may be enforced by execution as in ordinary cases. When in such case decree is in favor of different persons not united in interest, it shall be deemed a separate decree as to such person, and may be enforced accordingly. *Ibid.*, § 426.

Decree of foreclosure shall have effect to bar equity of redemption, and property sold on execution issued upon decree may be redeemed in like manner and with like effect as property sold on execution issued on judgment, and not otherwise. *Ibid.*, § 427.

Upon a sale of real property on execution, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided in this chapter (on Redemption, chap. V of title III). *Ibid.*, § 245.

When any of proceeds of sale remains with clerk unclaimed by person entitled to same for period of two months, court or judge thereof shall direct that same be put at interest by clerk, subject to order of court, for benefit of such person, his representatives or assigns. *Ibid.*, § 428.

During pendency of action at law for recovery of debt secured by lien mentioned in section 423, suit can not be maintained for foreclosure of such lien, nor thereafter, unless judgment be given in such action that the plaintiff recover such debt or part thereof, and an execution thereon against property of defendant in judgment is returned unsatisfied in whole or in part. *Ibid.*, § 429.

When suit is commenced to foreclose lien, by which debt is secured, which debt is payable in installments of interest or principal, and any of such installments is not then due, court shall decree foreclosure of lien, and may also decree sale of property for satisfaction of whole of such debt, or so much thereof as may be necessary to satisfy the installment then due, with costs

of suit; and in latter case, decree of foreclosure as to remainder of property may be enforced by order of sale, in whole or in part, whenever default made in payment of installments not then due. *Ibid.*, § 430.

If, before decree is given, amount then due with costs of suit is brought into court and paid to clerk, suit shall be dismissed, and if same be done after decree and before sale, effect of decree as to amount then due and paid shall be terminated, and execution, if any have issued, be recalled by clerk. When an installment not due is adjudged to be paid, court shall determine and specify in decree what sum shall be received in satisfaction thereof which sum may be equal to such installment, or otherwise, according to present value thereof. The provisions of this chapter (on the Foreclosure of Liens upon Real or Personal Property, §§ 423-434) are not to be construed so as to exclude a person having such a lien from any other remedy or right in regard to such property. *Ibid.*, § 431.

In contract of or for sale of railroad equipment or rolling stock, it may be agreed that title to property sold or contracted to be sold, although deliverable immediately or subsequently, shall not vest in purchaser until purchase price fully paid, or that seller shall have lien thereon for unpaid purchase money; and in any contract of or for leasing such property, it may be stipulated that there be a conditional sale at termination of lease and rentals received may, as paid, be treated as purchase money, and title shall not vest in lessee or vendee until purchase price paid in full, notwithstanding delivery to and possession by lessee or vendee, but no such contract shall be valid against subsequent judgment creditor, or subsequent bona fide purchaser for value and without notice, unless evidenced by instrument duly acknowledged like deeds and filed for record in office of county clerk of county where at time of execution thereof is situated principal office of vendee or lessee within state, and unless each locomotive, engine, or car so sold, or constructed* to be sold, or leased as aforesaid, shall have name of vendor or lessor plainly marked on each side, followed by word "owner" or "lessor," as case may be. These contracts shall be recorded by county clerk in book of records of mortgages of real estate in said county; and on payment in full of purchase money, and performance of terms and condition stipulated in any such contract, a declaration in writing to that effect shall be made by vendor or assignee, on margin of record of contract, attested by county clerk, or by separate instrument acknowledged and recorded as aforesaid. *Ibid.*, §§ 5137, 5138.

PENNSYLVANIA.

All saw-logs, sawed lumber, lath, pickets and shingles, and all hewn timber and spars, and all petroleum or coal oil, crude or refined, in tanks, reservoirs, barrels or other receptacles, in bulk, also iron tanks and tank cars, and all iron-ore mined and prepared for use, pig-iron, blooms and rolled or hammered iron in sheets or bars, manufactured slate and canal boats, may be mortgaged for any sum not less than five hundred dollars, by instrument in writing, signed by owner or agent duly constituted, and acknowledged likewise in following form:

[This is form prescribed by Stewart's Purdon's Digest of 1905 (13th ed.) at p. 1201, § 239, for chattel mortgage on the kind of property described in that section for not less than \$500; also at p. 1203, § 250, *infra*, for chattel mortgage on kind of property described in that section for not less than \$100].

581. Chattel Mortgage, Statutory Form.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that indebted unto in the sum of dollars and
cents, being for .

* So in original.

Now, for securing the payment of the said debt and the interest from the date hereof to the said , do hereby sell, assign, and transfer to the said , all the goods, chattels and property described in the following schedule, viz.: said property now being and remaining in the possession of :

PROVIDED ALWAYS, and this mortgage is on the express condition that if the said shall pay to the said , the sum of , with interest, as follows, viz.: , which said sum and interest, the said hereby covenant to pay, then this transfer to be void and of no effect; but in case of nonpayment of the said sum, at the time or times above mentioned, together with interest , then the said may give to the said or to the person in possession of the property, claiming the same, written notice as required by law, of intention to foreclose the mortgage for breach of the condition thereof. and if the said sum is not then paid, the said shall have full power and authority to enter upon the premises of the said party of the first part, or any other place or places where the goods and chattels aforesaid may be, to take possession of said property, to sell the same according to law, and the avails, after deducting all expenses of the sale and keeping of the said property, to apply in payment of the above debts; if from any cause said property shall fail to satisfy said debt, interest, costs and charges, the said covenant and agree to pay the deficiency.

IN WITNESS WHEREOF, ha hereunto set hand and seal , the day of in the year of our Lord one thousand nine hundred and .
Sealed and delivered in the presence of [SEAL.]

But parties may include in mortgage any covenants not inconsistent with provisions of this act. Stewart's Purdon's Digest of 1905 (13th ed.), p. 1201, § 239.

Such mortgage shall, except as between the parties, be valid only from time of filing and indexing same in office of recorder of deeds of proper county; and in case of more than one mortgage, the one first filed and indexed shall have preference. Ibid., p. 1201, § 240.

Such mortgages shall be filed in recorder's office, in county wherein mortgagor resides, where mortgage is made, if resident of state of Pennsylvania, otherwise same shall be filed in county wherein chattels actually are at time of execution of mortgage. And recorder of deeds shall provide book or books, to be entitled "Chattel Mortgage Index Book," wherein shall be kept an alphabetical index of mortgages so filed, containing names of mortgagor and mortgagee, and amount and date of mortgage. Ibid., pp. 1201, 1202, § 241.

Such mortgages may be assigned or released by instrument in writing, signed by mortgagee or agent duly constituted, and recorded in same office as original mortgage; and such assignment or release shall, except as between the parties, be valid only from time of recording same. Ibid., p. 1202, § 242.

No such mortgage shall be valid for longer period than one year from date thereof, unless statement in writing signed by mortgagee or agent duly constituted, and acknowledged, and specifying amount due on mortgage, shall be filed with recorder of deeds of county wherein mortgage recorded, at least thirty days before expiration of year aforesaid, whereupon same shall continue valid for amount due for further period of one year. Ibid., p. 1202, § 243.

In case sum secured by such mortgage, or part thereof, shall remain unpaid, after time specified therein for payment thereof, mortgagee or agent duly constituted, after having given mortgagor or legal representative thirty days' notice, either personally or by public advertisement, inserted four times, at intervals of one week each, in daily newspaper, if any, and if not, in

weekly paper published in county wherein mortgage recorded, may cause the said chattels to be sold at public auction; in case proceeds of sale shall more than repay debt or balance due and costs of sale, remainder shall be paid forthwith to mortgagor or agent duly constituted, or legal representatives of mortgagor. *Ibid.*, p. 1202, § 244.

When condition of mortgage of personal property broken, mortgagor, or person lawfully claiming or holding under him, may redeem same at any time before property sold, by payment of debt, interest and costs. *Ibid.*, p. 1202, § 245.

Person before whom acknowledgment of mortgagors is taken, shall certify that said parties are personally known to him. *Ibid.*, p. 1202, § 247.

It is duty of owner or owners of such property so mortgaged, to disclose to person or persons, association or corporation, about to purchase such property, the fact of its being so mortgaged, with amount of same, place of record, and time of maturity; and any failure to truthfully state the same, or any part thereof, to purchaser or purchasers, is misdemeanor. *Ibid.*, p. 1202, § 248.

This act shall continue in force for period of five years from date of its approval, and no longer; but no mortgage existing at expiration of said period shall be affected by limitation in this section. *Ibid.*, p. 1202, § 249.

This act seems to have expired by limitation; and it may be questioned whether any mortgages executed under it are still in force. *Ibid.*, p. 1202, note to § 249.

Act approved May 18, 1876. *Ibid.*, p. 1201, margin.

All iron ore mined and prepared for use, pig-iron, blooms and rolled or hammered iron in sheets, bars or plates, iron and steel nails, steel ingots and billets, rolled or hammered steel in sheets, bars, or plates, and all boilers, engines, oil, gas, and artesian well supplies, and all steel or iron castings of every description not in place, all petroleum or coal oil, crude or refined, in tank, barrels, reservoirs or other receptacle in bulk, all roofing and manufactured slate, as well as all slate quarried to be used for roofing or manufactured for other uses, asphaltum blocks including all materials used in the manufacture thereof, all manufactured cement in barrels, bags or bins, including all materials on hand used in the manufacture thereof, may be mortgaged for any sum not less than one hundred dollars, by an instrument in writing signed by owner or his agent, duly authorized and constituted, and duly acknowledged like deed in following form:

[Same as No. 581, *ante.*] *Ibid.*, pp. 1202, 1203, §§ 250, 251.

But all the parties may include in mortgage any covenant not inconsistent with the provisions of this act. *Ibid.*, p. 1203, § 252.

Such mortgage shall, except between the parties, be valid only from time of recording same in office of recorder of deeds of proper county, and in case of more than one mortgage, the first recorded shall have preference and be first paid out of proceeds of sale of property mortgaged. *Ibid.*, p. 1203, § 253.

Such mortgages shall be so recorded in county where chattels are at time mortgage executed, and same shall be recorded and indexed in books provided for, and in same manner as other mortgages. *Ibid.*, p. 1203, § 254.

Such mortgages may be assigned or released by instrument in writing, signed by mortgagee or agent, duly constituted, and recorded in same office as original mortgage, and such assignment or release shall, except between the parties, be valid only from time of recording same. *Ibid.*, p. 1203, § 255.

No such mortgage is valid for longer period than three months after maturity, unless statement in writing, signed by mortgagee or agent duly constituted, and acknowledged, and specifying amount due upon mortgage, is recorded in office of recorder of deeds of county where mortgage recorded, within said period of three months, and in case such statement filed, said mortgages shall continue valid for amount due for further period of one year from maturity. *Ibid.*, p. 1203, § 256.

In case sum received* by such mortgage, or part thereof, is unpaid after

* So in original.

time specified for payment thereof mortgagee or agent duly constituted, after having given mortgagor or legal representative thirty days' notice, either personally or by public advertisement inserted four times, at intervals of one week each, in daily or weekly newspaper published in county where mortgage recorded, may cause said chattels to be sold at public auction, having first given not less than ten days' notice of time and place of such sale, by not less than ten written or printed, or partly written and partly printed handbills, posted in the most public places in vicinity; in case proceeds of sale shall more than repay debt, or balance, and cost of sale, remainder shall be paid forthwith to mortgagor, or agent duly constituted, or to legal representative of mortgagor. *Ibid.*, p. 1204, § 257.

When condition of mortgage of personal property is broken, mortgagor, or person lawfully claiming or holding under him, may redeem same, at any time before property sold, by payment of debt with interest and costs. *Ibid.*, p. 1204, § 258.

Recorder of deeds shall, when required, give certified copies of such mortgage, assessments,* extensions or satisfactions of same, in like manner as of mortgages of real estate, and shall receive like fees therefor, and such certificate shall be received in evidence the same as the original instruments. *Ibid.*, p. 1204, § 259.

It is duty of owner or owners of such property so mortgaged to disclose to person or persons, association or corporation, about to purchase such property, the fact of its being so mortgaged, with amount of same, place of record and time of maturity; and any failure to truthfully state the same or any part thereof to purchaser or purchasers, is misdemeanor. *Ibid.*, p. 1204, § 260.

Every tenant of right to mine coal, or lessee of coal lands or coal-mining rights, in or on land of others, in Schuylkill county, may mortgage their interests in such rights or property demised, together with all machinery and fixtures appurtenant or belonging thereto or used in the enjoyment of same, so as to be good and available in law against all subsequent purchasers or execution-creditors, upon the recording of such mortgages in the county of Schuylkill, within five days after execution of same and in office of recorder of deeds of such county. *Ibid.*, p. 1198, §§ 222, 223.

Recorder of deeds of said county shall not receive any such original instrument to record, unless it is acknowledged by mortgagor, so as to entitle same to be recorded. *Ibid.*, p. 1199, § 227.

Purchase-money rentals or royalties charged on coal and mineral lands may be mortgaged; and the mortgage is a lien, when recorded, as provided. *Ibid.*, p. 1199, §§ 231-233.

Lessee for term of years, of any colliery, mining land, manufactory or other premises, may mortgage his lease or term in demised premises, with all buildings, fixtures and machinery thereon to the lessee belonging and thereunto appurtenant, with same effect, as to lessee's interest and title, as in case of mortgaging a freehold interest and title, as to lien, notice, evidence and priority of payment, in case mortgage be in like manner acknowledged and placed of record in proper county, together with lease. *Ibid.*, p. 1200, § 236.

Any railroad corporation of this commonwealth may secure payment of its bonds by a mortgage upon whole or part of their property, rights and franchises, subject to prior incumbrances. *Ibid.*, pp. 3797, 3798, § 86.

The provisions of the act (section 86, *supra*) to which this is supplement, shall apply to mortgages upon locomotive engines and cars of railroad corporations, and other personal property held by them for purpose of operating railroads belonging to them; and mortgagors may retain use and possession of mortgaged property, without impairing lien of mortgage; but said mortgage shall not be valid against persons not parties thereto, unless recorded as now required by law in case of mortgages of real estate, in every county where mortgaged property situated; and all cars and engines mortgaged under the provisions of this act, shall be marked, in some conspicuous place, with name of trustee in said mortgage. *Ibid.*, p. 3798, § 87.

* So in original.

PHILIPPINE ISLANDS.

Section ten of Act numbered Six hundred and sixty-seven, entitled "An Act prescribing the method of applying to governments of municipalities, except the city of Manila, and to provinces for franchises to construct and operate street railway, electric light and power and telephone lines, the conditions upon which the same may be granted, certain powers of the grantees of said franchises and of grantees of similar franchises under special Act of the Commission, and for other purposes," is amended so as to provide, as follows:

Owner of electric street railway, electric telephone line, or electric light or power line constructed under this law, or by authority of a special Act of the Commission, may issue a mortgage upon franchise, plant, equipment, and property owned and operated in connection with franchise, which shall constitute first lien on entire property, movable and immovable, then in possession of or subsequently acquired by owner of franchise and used by him in operation under franchise. Such mortgage shall not prevent sale of movables or personal property of owner when same shall have ceased to be useful for maintenance and operation of line free from lien, but lien shall attach to all property purchased and substituted in proper equipment of line. In order that the mortgage shall be prior lien against purchasers of immovables, mortgage having been duly executed in accordance with law shall be filed with registrar or registrars of land in province or provinces in which line is: but mortgage may be duly filed as herein directed in the Spanish or English language as it may have been executed in either language, but unless original accompanied by reasonably correct translation, it shall be duty of registrar to procure the making of such a translation and to charge and collect a reasonable amount from person filing mortgage to pay for such a translation at time of filing original instrument, and to file translation with original, the latter in case of doubt to control. When mortgage foreclosed and property sold thereunder in accordance with its terms, as a whole, the sale shall include franchise, which may pass by assignment to assignee and be enjoyed by him, if he is otherwise competent to do such business in the Philippine Islands, in accordance with its terms. The mortgage may be issued to secure one loan or to secure a number of negotiable bonds, the owners of which shall be represented by one or more trustees, who shall be grantee or grantees of mortgage. Acts 1903-1904, p. 73. No. 1022. Enacted December 7, 1903.

PORTO RICO.

The following property only can be the subject of a mortgage contract:

1. Real property.
2. Property rights in real estate which can be alienated in accordance with law. Civil Code of 1902, § 1775.

RHODE ISLAND.

Every mortgagee of real or personal estate, his heirs, executors, administrators or assigns, having received full satisfaction for money due on mortgage, shall, at request of mortgagor, heirs, executors, administrators or assigns, at his or their cost, discharge same upon face or back of mortgage, or upon face or margin of record, as provided in following section, or by separate instrument of release to be recorded upon face or margin of record of mortgage, or in proper record-book with suitable references to original record, which shall forever afterwards discharge, defeat and release mortgage and perpetually bar all actions to be brought thereon in any court. General Laws, Revision of 1909, p. 899, § 5.

Mortgage may be discharged in whole or part by entry acknowledging satisfaction thereof or the payment thereon, as case may be, made on face or back of mortgage, or on face or margin of record of mortgage, in the

records of land-evidence, and signed by mortgagee or executor or administrator, or, if mortgage assigned, by assignee or executor or administrator, and such entry shall have same effect as deed of release duly acknowledged and recorded. *Ibid.*, p. 899, § 6.

Where mortgagor entitled to redeem, he shall by virtue of this section have power to require mortgagee, instead of discharging or reconveying, and on terms on which he would be bound to discharge or reconvey, to assign mortgage-deed and convey mortgaged property to such third person as mortgagor directs, in case mortgagor assumes expense of making assignment and conveyance, and obligates himself to have same recorded forthwith, and the fact of such transfer being made shall be prima facie evidence that such assumption of expense and such obligation have been made; and mortgagee shall by virtue of this section be bound, on being relieved of all expense and having such obligation made to him, to assign and convey accordingly; and such right shall belong to and be capable of being enforced by each incumbrancer, or by mortgagor, notwithstanding any intermediate incumbrance, but a requisition of incumbrancer shall prevail over requisition of mortgagor and, as between incumbrancers, a requisition of prior incumbrancer shall prevail over requisition of subsequent incumbrancer. This section does not apply in case of mortgagee being or having been in possession. *Ibid.*, pp. 899, 900, § 7.

If any mortgagee, heirs, executors, administrators or assigns, shall not, within ten days after request made in that behalf and tender of all reasonable charges therefor, discharge mortgage in one of the modes aforesaid, or otherwise make and execute release and quit-claim of estate so mortgaged, and acknowledge same before proper officer, or transfer mortgage if required under provisions of preceding section, he or they so refusing shall be liable to make good all damages that shall accrue for want of such discharge, release or transfer, to be recovered in action on case; and in case judgment shall pass against party sued, he shall pay plaintiff triple costs upon such suit. *Ibid.*, p. 900, § 8.

Nothing herein contained shall be so construed as to defeat, invalidate, annul or render ineffectual any other legal or equitable discharge, payment, satisfaction or release of any mortgage. *Ibid.*, p. 900, § 9.

No mortgage of personal property is valid as to assignee in insolvency of mortgagor, or any other person except the parties thereto and their executors and administrators, until possession delivered to and retained by mortgagee, or mortgage recorded in records of mortgages of personal property in town or city where mortgagor resides, if in state; and if not in state, then in town where property is at time of making mortgage; which recording or taking and retention of possession shall be made or taken within five days from date of signing thereof; but nothing herein affects any transfer of property under bottomry or respondentia bonds, or of any ship or goods at sea or abroad, if mortgagee shall take possession as soon as may be after arrival of same in state. *Ibid.*, p. 900, § 10.

Every town clerk, and every recorder of deeds, as case may be, shall record mortgages of personal property, and of chattels-real, in book to be kept for that purpose, with time when received and recorded; but mortgage of both real estate and personal property, or of both real estate and chattels-real, may be recorded with record of mortgages of real estate only; but in such cases recording-officer shall enter upon index to records of personal property and chattels-real a reference to book and page upon which mortgage recorded. *Ibid.*, pp. 900, 901, § 11.

When condition of mortgage of personal property only (but not including chattels-real) has been broken, mortgagor, or any person lawfully claiming or holding under him, may redeem same at any time within sixty days thereafter, unless property in mean time sold in pursuance of contract between parties. *Ibid.*, p. 901, § 12.

Person entitled to redeem personal property shall pay or tender to mortgagee, or person holding under him, sum due on mortgage, with all reasonable and lawful charges and expenses incurred in care and custody of property or otherwise arising from the mortgage thereof; and if property not forthwith restored, person entitled to redeem same may recover it in proper action, or may recover in any proper action damages sustained by withholding thereof. *Ibid.*, p. 901, § 13.

Any person entitled in equity to redeem any mortgaged property, whether real or personal, may prefer a bill to redeem same, which bill may be heard, tried and determined according to usages in chancery and principles of equity. *Ibid.*, p. 901, § 14.

Any person entitled to foreclose equity of redemption in any mortgaged estate, whether real or personal, may prefer a bill to foreclose same, which bill may be heard, tried and determined according to usages in chancery and principles of equity. *Ibid.*, p. 901, § 15.

At any sale by public auction made under and according to provisions of mortgage of real or personal estate, or of any other conveyance by way of mortgage, or of any pledge of stock or other personal property, or of any power of sale contained therein or annexed thereto, mortgagee in such deed of mortgage or other conveyance, or pledgee, or assigns, or heirs, executors or administrators, or any person for him or them, may fairly and in good faith bid for and purchase such estate or property so put up for sale, or any part thereof, in same manner as same may be bid for and purchased by any other person. *Ibid.*, p. 901, § 16.

Receipt in writing of mortgagee shall be sufficient discharge for any money accruing from sales made under powers of sale conferred by his mortgage; and person paying same to mortgagee shall not be obliged to inquire whether any money remains due under mortgage, or to see as to application of such proceeds in case of sale. *Ibid.*, p. 901, § 17.

The entire policy of fire insurance company, unless otherwise provided by agreement indorsed thereon or added thereto, shall be void, if subject of insurance be personal property and be or become incumbered by chattel mortgage, or if, with knowledge of insured, foreclosure proceedings be commenced or notice given of sale of any property covered by policy by virtue of any mortgage or trust deed. *Ibid.*, p. 770.

No officer of any corporation shall act as auctioneer in foreclosure of mortgage held by such corporation. *Ibid.*, p. 615, § 10.

Any of the following instruments shall be recorded or filed by town clerk or recorder of deeds, in manner prescribed by law, on request of any person and on payment of the lawful fees:—

6. All personal property mortgages.

7. All instruments required by statute to be recorded, including deeds, mortgages and transfers and discharges thereof, leases and transfers and cancellations thereof, and the covenants, conditions, agreements and powers therein contained. *Ibid.*, pp. 875, 876, § 6.

Such record or filing shall be constructive notice to all persons of contents of such instruments and other the matters so recorded, so far as same are genuine. *Ibid.*, p. 876, § 7.

The provisions of Title XXVII. relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. *Ibid.*, p. 932, § 5.

In contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that title to property sold, or contracted to be sold, although possession delivered immediately or subsequently, shall not vest in purchaser until purchase price paid, or that seller shall have lien for unpaid purchase money. And in contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at termination of contract, and rentals or amounts to be received under contract may, as paid,

be treated as purchase money, and title shall not vest in lessee or bailee until purchase price paid and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee: but no such contract shall be valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties and acknowledged by vendee or lessee or bailee, as case may be, or duly proved, like a deed, and filed for record in office of secretary of state, and unless each locomotive-engine or car so sold, leased or hired, or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by word "Owner" or "Lessor," or "Bailor," as case may be. These contracts shall be recorded by secretary of state in book of records to be kept for that purpose. And on payment of purchase money, and performance of terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by vendor, lessor or bailor, or assignee, on margin of record of contract, duly attested, or by a separate instrument acknowledged by vendor, lessor or bailor, or assignee, and recorded as aforesaid. *Ibid.*, p. 738, §§ 63, 64.

SOUTH CAROLINA.

Different sets of books shall be provided by the clerks and registers of mesne conveyances of the several counties for recording chattel mortgages and mortgages of real estate, and separate indexes shall be provided.

It shall be a sufficient record of chattel mortgage, where amount secured is not more than one hundred dollars, to enter upon index book to be kept for that purpose by register of mesne conveyances, names of mortgagor and mortgagee, amount and character of debt secured, brief description of chattels pledged, date of mortgage and of maturity of debt, and date of presentation of mortgage for record. Civil Code of 1902, § 950.

All deeds of trust, or instruments in writing, conveying either real or personal estate and creating a trust or trusts in regard to such property, or charging or encumbering same; all mortgages or instruments in writing in nature of mortgage of any property, real or personal; and, generally, all instruments in writing required by law to be recorded in office of register of mesne conveyances or clerk of court in those counties where office of register of mesne conveyances has been abolished, or in office of secretary of state, shall be valid, so as to affect from time of delivery or execution the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice, only when recorded within forty days from time of delivery or execution in office of register of mesne conveyances or clerk of court or county where property affected thereby is situated, in case of real estate; and in case of personal property, of county where owner of property resides, if he resides within State, or, if he resides without State, of county where personal property situated at time of delivery or execution of said deeds or instruments; but recording and record of said deeds or instruments of writing subsequent to expiration of said forty days shall from date of such record operate as notice to all who may subsequently thereto become creditors or purchasers. *Ibid.*, § 2456.

No chattel mortgage shall be valid or good to convey any interest or right to mortgagee, unless property mortgaged shall be described in writing or typewriting, but not printing, on face of mortgage, nor shall any prosecution lie for selling property under lien of such mortgage, unless property mortgaged shall be so described. *Ibid.*, § 3002.

In bills of sale of plate, gold and silver, or goods and chattels whatsoever, by way of mortgage, with right of redemption upon performance of proviso in bill of sale, where plate, gold and silver, or goods and chattels are actually delivered to person to whom bill of sale made, and are in his actual possession, (and not a delivery or seizin in form of law only), and shall continue in same for space of two years after breach of proviso in bill of sale,

without redemption thereof, said goods or chattels so sold and delivered and possessed, though with right or equity of redemption, are vested in person or persons to whom bill of sale made, and their executors, administrators, and assigns, to have and to hold to them, their executors, administrators, and assigns, as their own proper goods and chattels forever, except when person or persons having right or equity of redemption is beyond seas or otherwise out of limits of State, all which persons shall have saved to them their equity of redemption, if they prosecute same within three years after breach of proviso of bill of sale, and at no time thereafter. *Ibid.*, § 3003.

When personal property under pledge, mortgage or hypothecation is to be sold for purposes of satisfying loan or debt secured by such pledge, mortgage or hypothecation, pledgee, mortgagee or person holding instrument showing hypothecation shall advertise time and place of sale by posting notice thereof, in writing, at least fifteen days before sale in three public places in county where property may be found, one of which shall be court house door, or shall publish same at least two weeks in newspaper published in his county, unless person making pledge, mortgage or hypothecation, or legal representative, shall consent, or shall have consented to sale in some other mode or at some other notice, such consent to be expressed in writing. *Ibid.*, § 3004.

No mortgage of any crop or crops shall be good and effective to convey to mortgagee any interest in any crop or crops other than crop or crops to be raised during year in which mortgage given, and unless land whereon said crop or crops are to be raised shall be described or mentioned in said mortgage. *Ibid.*, § 3005.

Mortgagor of any chattel shall have right to redeem property mortgaged by him at any time before sale by mortgagee by paying mortgage debt and any costs incurred in attempting to enforce its payment, and a tender made by mortgagor of amount sufficient to pay debt and costs, if not accepted, shall render mortgage null and void. *Ibid.*, § 3006.

No voluntary postponement by mortgagee to seize personal property covered by chattel mortgage or bill of sale used as chattel mortgage after condition broken, and no acceptance of part of debt secured by mortgage or such bill of sale after condition broken, shall operate as discharging mortgage or bill of sale, or as reverting the title to chattel or chattels in mortgagor; but indulgence may be granted by mortgagee to mortgagor after condition broken, as on other past due securities, without prejudice or danger to any rights or remedies of mortgagee in premises to collect his debt or to seize the chattels at any time at his option. *Ibid.*, § 3007.

All deeds of conveyance of railroad beds, tracks, and right of way, cars, locomotive engines, rolling stock and other railway equipment, all leases and mortgages or other conditional sales of, and all other instruments in writing relating to, such property in State, shall be valid, so as to affect from time of delivery of instrument or execution thereof the rights of subsequent creditors or purchasers for valuable consideration without notice, only when recorded within forty days from execution and delivery thereof in office of secretary of state; but said deeds, leases, mortgages and other conditional sales and instruments in writing, if recorded subsequent to expiration of said period of forty days, shall be valid to affect rights of subsequent creditors and purchasers for valuable consideration without notice only from date of such record. Each and every locomotive engine, car and other railway equipment shall have name of vendor, lessor, bailor or mortgagor plainly marked on each side, followed by word "owner," "lessor," "bailor" or "mortgagor," as case may be; and each deed of conveyance, lease, conditional sale and mortgage of such railroad property shall contain such a description thereof as will correspond to name so marked thereon. *Ibid.*, § 634.

Before such deeds, leases, mortgages and other instruments in writing can be recorded by secretary of state, execution thereof shall first be proved

by affidavit in writing of a subscribing witness to instrument, in same manner prescribed by section 948 of this Code in relation to recording of deeds in office of register of mesne conveyances of the several counties of State. *Ibid.*, § 635.

Said conveyances, leases and mortgages and other instruments in writing shall be recorded by secretary of state in books to be kept for that purpose in his office. Certificate or certified copy by secretary of state shall be competent evidence of such record and of facts contained in each deed, lease and mortgage or other instrument in writing so recorded and certified in all courts of State. Where such mortgage so recorded is satisfied, mortgagee shall note same on margin of record, or declare same to be satisfied in separate instrument in writing, to be recorded as above provided, under penalty of five hundred dollars, to be recovered in any court of competent jurisdiction at suit of mortgagor or assignees, or any other party aggrieved thereby. *Ibid.*, § 636.

Any person or persons who shall wilfully and knowingly sell and convey real or personal property on which lien exists without first giving notice of such lien to purchaser or purchasers, shall be guilty of misdemeanor; but this does not apply to public officers in discharge of their official duties. Criminal Code of 1902, § 336.

Any person or persons who shall sell or dispose of personal property on which mortgage or other lien exists, without written consent of mortgagee or lienee, or owner or holder of mortgage or lien, and shall fail to pay debt secured by same within ten days after sale or disposal, or to deposit in such time amount of debt with clerk of court of common pleas for county in which mortgage or lien debtor resides, is guilty of misdemeanor; but this section does not apply in cases of sales made without knowledge or notice of mortgage or lien by the person so selling such property. *Ibid.*, § 337.

582. Chattel Mortgage.

THE STATE OF SOUTH CAROLINA.

TO ALL WHOM THESE PRESENTS MAY CONCERN, _____, in the state aforesaid, send greeting:

WHEREAS, the said [description of debt].

NOW, KNOW ALL MEN, that _____, the said _____, hereinafter styled the mortgagor, in consideration of the premises and for the better securing the payment of the debt herein above mentioned, and also in consideration of the sum of one dollar duly paid at and before the execution of these presents (the receipt whereof by the said mortgagor is hereby acknowledged), have granted, bargained and sold, and by these presents do grant, bargain, sell and in plain and open market deliver unto _____, hereinafter styled the mortgagee, certain unincumbered personal property belonging to the said mortgagor, and more particularly described: [description]

TOGETHER with all and singular the rights, members, hereditaments and appurtenances incident to the said property.

TO HAVE AND TO HOLD the said property unto _____, and assigns forever.

And do hereby bind sel and _____ heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said mortgagee _____ and assigns from and against _____ and _____ heirs, executors, administrators and all other persons whomsoever.

AND IT IS AGREED that the said mortgagor, _____ heirs, executors, administrators and assigns, shall keep the said property insured against loss or damage by fire for the benefit of the said mortgagee for an amount not less than

dollars in such company as shall be approved by the said mortgagee to whom shall be delivered the policy of insurance.

PROVIDED, ALWAYS, that the said mortgageor, executors, administrators and assigns, shall and do well and truly pay or cause to be paid to the said mortgagee , or assigns, the said debt with the interest thereon according to the true intent and meaning of these presents, then this deed of bargain and sale shall be void, otherwise it shall remain in full force and virtue. But upon any default being made in the payment of the said debt, with the interest thereon, or of any part thereof, or of the insurance premiums to accrue hereunder, when the same shall severally become payable or in any of the provisions of this mortgage, then and in that event the said mortgageor, executors, administrators and assigns, hereby authorize the said mortgagee, agents and assigns, with or by the aid of any other person or persons to enter such place or places where the said property is or shall be then located, and to carry away the said property and to sell the same at public or private sale, and to deduct from the proceeds of such sale the principal and interest due on the said debt, as well as all other charges and expenses incurred by the said mortgagee in connection herewith, including a reasonable attorney's fee, returning the overplus (if any) unto the said mortgageor, executors, administrators or assigns.

AND IT IS LASTLY AGREED, that the said mortgageor is to remain in possession of the said property until default is made as hereinabove provided.

WITNESS hand and seal this day of , one thousand nine hundred and .

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

583. Chattel Mortgage with Note.

\$. 19 .
On the day of , next, I promise to pay to the order of , at , dollars, value received. Witness my hand and seal.

[Signature and seal.]

THE STATE OF SOUTH CAROLINA, }
County of . }

WHEREAS, I am indebted to in the sum of dollars, and have given my note therefor, of even date with these presents (which is hereto annexed), payable on the day of , A. D. 19 .

Now, in order to secure the payment of said note, and in consideration of the sum of five dollars to me in hand paid, I do hereby grant, bargain and sell unto the following goods and chattels, to wit: [*description*]

To have and to hold, all and singular, the said goods and chattels unto the said , his executors, administrators and assigns, forever.

PROVIDED, NEVERTHELESS, that if the said mortgageor shall pay to the mortgagee the sum hereinabove mentioned, when due, then this mortgage to be void, otherwise to remain in full force and effect.

AND PROVIDED FURTHER, that said mortgageor shall retain possession of said goods and chattels until default be made in the payment of the said note, but

if the same is not paid when due, or if, before the said note is due, the said mortgagor shall attempt to make way with or remove said goods and chattels, or any part thereof, from the place where they now are, then, and in either event, the said mortgagee, or his agent, shall have the right, without suit or process, to take possession of the said goods and chattels, wherever they may be found, and may sell the same, or so much as may be necessary, at public auction for cash, after giving notice by advertisement days, and shall apply the proceeds of said sale to the discharge of the said debt, interest and expenses, including per cent. on the amount due as attorney's fees for collection, and pay any surplus to the said mortgagor and his assigns.

IN WITNESS WHEREOF, I, the said mortgagor, do hereunto set my hand and seal, this, the day of , A. D. 19 .

[Signature and seal.]

Signed, sealed and delivered in the presence of

[Signatures.]

584. Lien on Crop — Mortgage Clause.

THE STATE OF SOUTH CAROLINA, }
 County of . }

MEMORANDUM OF AGREEMENT, made this day of , A. D. 19 , between , of the first part, and , of the second part, planter.

FIRST. The part of the first part agree with the party of the second part, who was engaged in the cultivation of the soil upon a certain plantation in county, known as and containing acres, to make advances to him during the current year in money or supplies to be used and expended in the cultivation of such soil; the said advances not to exceed in all the sum of dollars, payable in successive installments.

SECOND. The party of the second part, for and in consideration of the advances to be made, doth give and grant to the said part of the first part, and the survivor or survivors of , and the executors and administrators or assigns of such survivor, a lien on the crop or crops, which shall or may be made during this current year upon the said plantation, in preference to all other liens, existing or otherwise, to the extent and amount of such advances, together with interest hereon, at the rate of per cent. per annum, in accordance with and subject to the provisions of the laws of the state of South Carolina.

THIRD. The party of the second part, in consideration of the said advances, and of one dollar paid by the part of the first part, the receipt whereof is acknowledged, and in order further to secure the payment of the full amount of advances made unto the part of the first part, does hereby mortgage, pledge, assign and convey to the said the following personal property, to wit: [description]. This deed of mortgage to be void only upon the payment of said amount, otherwise to remain in full force with the right to the said to foreclose and sell according to law in such case made and provided.

FOURTH. The party of the second part agrees with the part of the first part, in consideration of the advances so made and to be made by to him, that he will send to for sale on commission the entire crop of cotton, rice and

other salable products made on said plantation, and in default thereof, he will pay to a commission of per cent. on the estimated value of such cotton, rice and other products not sent to for sale. And further, the party of the second part gives the part of the first part a lien on the entire crop for the said commissions, in the same manner as for the advances previously named; and in case the said shall in any way attempt or seek to evade the performance of the stipulations herein set forth to be done or observed by him or any one or more of them, then shall be deemed and held to be about to defeat the lien hereinbefore provided for.

FIFTH. The party of the second part binds himself to send prior to next, to the part of the first part, sufficient cotton, rice or other salable products, to pay all advances.

SIXTH. The party of the second part further agrees that in case legal measures are taken toward the enforcement of the lien or foreclosure of mortgage, that all costs and expenses incident thereto, including attorney's fees, shall be due and collectible as if they were part of the same.

IN TESTIMONY WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signature.]

LANDLORD'S RELEASE.

I, , landlord of the party within mentioned, do hereby release to for the purpose of securing the within mentioned debt, all my priority of rights to the crops made on the within described plantation belonging to me and leased to said party.

WITNESS my hand and seal, this , 19 .

[Signature and seal.]

Witness:

[Signature.]

SOUTH DAKOTA.

Mortgage of personal property may be made in substantially the following form:

585. Chattel Mortgage, Statutory Form.

This mortgage, made the day of , in the year by A. B., of , by occupation a , mortgagor, to C. D., of , by occupation a , mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [*here describe the property*], as security for the payment to him of dollars, on [*or, before*] the day of , in the year , with interest thereon [*or, security for the payment of a note or obligation, describing it, etc.*]

A. B.

Compiled Laws 1908, § 2072.

Chattel mortgage may be foreclosed by advertisement, action or sale of property, upon notice containing names of mortgagor, mortgagee, person owning mortgage, its date, amount due, nature of default, description of property, and time and place of sale. *Ibid.*, §§ 2073-2075.

County commissioners designate at least three public places in their county for sale of chattels, but mortgagor may at time of seizure designate by written notice delivered to mortgagee or agent another place in county or adjoining county as place of sale, and growing or harvested crops, grain in hulk, stocks of merchandise or buildings may be sold without moving to place of sale, and stocks of merchandise may be sold in the building containing the same or any other building in the city, town or village. *Ibid.*, § 2076.

The notice of sale shall be published at least six days before sale in newspaper of general circulation printed and published nearest place of sale in county where mortgage or copy filed, or at option of mortgagor, in lieu of publication, may be posted conspicuously for at least ten days in five public places in county, if mortgagor or agent notify mortgagee or representative in writing at time of seizure of election to notice by posting. *Ibid.*, § 2077.

Sales to be between 12 o'clock noon and 4 o'clock p. m., on Saturday, within twenty days after seizure of property, unless sale postponed. Sale may be postponed for lack of bidders or by request of mortgagor one week by public announcement. If sale commenced and in ordinary course all property cannot be and is not sold within hours mentioned, it may be adjourned from day to day and over Sunday till completed, not exceeding altogether ten days. *Ibid.*, § 2078.

Within ten days after foreclosure, the person making the sale shall make out a full report in writing of all the proceedings and file it in the office of register of deeds of county where mortgage filed. *Ibid.*, § 2080.

Out of the proceeds, the officer making sale shall pay, first, costs and expenses of foreclosures; second, amount of mortgage debt; third, balance to owner of property. *Ibid.*, § 2081.

Any stipulation in mortgage waiving any provision in form is void. *Ibid.*, § 2082.

Mortgage void as against creditors and subsequent purchasers and incumbancers in good faith for value unless original or copy filed in office of register of deeds of county where property situated. Such filing operates as notice. *Ibid.*, §§ 2085, 2086.

Property in transit from the mortgagee to the county of the mortgagor's residence or to a location for use is, during a reasonable time for transportation, to be taken as situated at such county or location. Personal property in business of a common carrier is to be deemed situated in the county of the carrier's principal office or place of business. *Ibid.*, § 2087.

A single mortgage embracing such things that separate mortgages would be required to be filed in different counties is valid only as to the things as to which it is duty filed, but an authenticated copy filed in any other county has the same effect as to property therein as the original. *Ibid.*, § 2088.

A mortgage of personal property ceases to be valid as against creditors of mortgagor and subsequent purchasers or incumbancers in good faith after the expiration of three years from the filing, unless within thirty days next preceding the expiration of such term, a copy and a statement of the amount of existing debt for which the mortgagee or his assignee claims lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of register of deeds in county where mortgagor then resides. It must be renewed in like manner every three years, or will cease to be valid. *Ibid.*, § 2089.

Mortgage must be signed by mortgagor in presence of two persons, who must sign as witnesses. No further proof or acknowledgment is required. *Ibid.*, § 2090.

Mortgagee shall at time of delivery of chattel mortgage make and deliver to mortgagor a true copy. *Ibid.*, § 2091.

No register of deeds shall receive or file chattel mortgage, unless it has receipt over mortgagor's signature for a copy, and a chattel mortgage without such a receipt is void. *Ibid.*, § 2092.

There is no fee for discharging or cancelling chattel mortgage of record. Ibid., § 2093.

When chattel mortgage satisfied, mortgagee or his assignee must within thirty days cause it to be satisfied of record. A failure to do so subjects him to a fine. Ibid., § 2094.

Mortgage may be canceled by register of deeds upon presentation of receipt for the sum or property secured or an acknowledgment of satisfaction thereof, signed by the mortgagee or assignee. Assignments must be in writing signed by mortgagee in presence of two witnesses signing as such, and filed in the office of register of deeds for filing the original mortgage, and thereafter the assignee shall be authorized and required to satisfy the mortgage. Ibid., § 2095.

A mortgage is not to be deemed defectively filed by reason of errors in copy filed which do not tend to mislead a party interested. Ibid., § 2096.

If mortgagor voluntarily removes property from county where it was when mortgaged, the mortgagee may take possession and dispose of it as pledge for payment of debt, though not due. Ibid., § 2097.

Personal property mortgaged may be taken under attachment or execution at suit of creditor of mortgagor, but the officer, before taking it, must pay or tender to mortgagee mortgage debt and interest or deposit amount with county treasurer, payable to order of mortgagee. Ibid., §§ 2098, 2099.

When property thus taken is sold under process, the officer must apply proceeds, first, to repayment of sum paid to mortgagee, with interest, and the balance as proceeds of sales under execution are applied. Ibid., § 2100.

No mortgage of any ship or vessel, or any part thereof, of United States, shall be valid against any person other than the mortgagor, his heirs and devisees and persons with actual notice, unless recorded in office of collector of customs where vessel registered or enrolled. Sections 2085 to 2100 do not apply to mortgage of ship or vessel so required by act of Congress to be recorded in a particular place or manner. Ibid., § 2101.

Any provision in chattel mortgage by which a lien is sought to be created on crops not then in existence, except crops to be grown within one year thereafter, is void. Ibid., § 2102.

Any provision in chattel mortgage by which it is sought to create lien on real estate is void. Ibid., § 2103.

586. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that this mortgage, made the day of _____, in the year one thousand nine hundred and _____, by _____, of _____, county of _____, state of South Dakota, by occupation a _____, mortgagor, to _____, by occupation a _____, mortgagee,

WITNESSETH, that the said mortgagor being justly indebted to the said mortgagee in the sum of _____ dollars, which is hereby confessed and acknowledged, ha _____ for the purpose of securing the payment of said debt, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said mortgagee and _____ assigns, all that certain personal property described as follows, to wit: [*description*] All of said property being now in the possession of said mortgagor in the county of _____, and state aforesaid, and free from all encumbrance.

TO HAVE AND TO HOLD, ALL AND SINGULAR, the personal property aforesaid, forever, as security for the payment of the note and obligation hereinafter described. Provided, always, and these presents are upon this express condition: That if the said mortgagor shall pay or cause to be paid unto the said mortgagee, _____ executors, administrators or assigns, the sum of _____ dollars, according to the conditions of _____ certain promissory note payable

to _____, at _____; \$ _____, dated _____, due _____, with interest at _____ per cent. per annum until paid; \$ _____, dated _____, due _____, with interest at _____ per cent. per annum until paid; \$ _____, dated _____, due _____, with interest at _____ per cent. per annum until paid, or any other note of said mortgagor given hereafter to the mortgagee herein, as a renewal hereof _____.

Then these presents to be void and of no effect. But if default shall be made in the payment of said sum or sums of money or the interest thereon, at the time the said note or notes shall become due, or if any attempt shall be made by the said mortgagor or any other person to dispose of or injure said property, or to remove said property or any part thereof, from said county of _____, or if said mortgagor do not take proper care of said property, or if said mortgagee shall at any time deem _____ insecure; then, thereupon and thereafter it shall be lawful, and the said mortgagor hereby authorize said mortgagee, _____ executors, administrators or assigns, or _____ authorized agent, to take said property, wherever the same may be found, and hold or sell and dispose of the same and all equity of redemption, at public auction, with notice as provided by law, and on such terms as said mortgagee or _____ agent may see fit, and said mortgagee may become the purchaser of said property at said sale, retaining such amount as shall pay the aforesaid note or notes and interest thereon, and an attorney's fee as provided by law, and such other expenses as may have been incurred, returning the surplus money, if any there may be, to the said mortgagor or _____ assigns, and the said mortgagor hereby waive demand and personal notice of the time and place of sale. And as long as the conditions of this mortgage are fulfilled, the said mortgagor to remain in peaceful possession of said property, and in consideration thereof he agree to keep said property in as good condition as it now is, at _____ own cost and expense.

_____ acknowledge that at the time of making and delivery of this mortgage, a full, true, perfect and complete copy of the same was delivered to and received by _____.

IN TESTIMONY WHEREOF, the said mortgagor ha _____ hereunto set _____ hand and seal this _____ day of _____, A. D. 19 _____.

[Signatures and seals.]

Signed, sealed and delivered in presence of _____

[Signature.]

STATE OF SOUTH DAKOTA, }
 County of _____, } ss.

I, _____, the within mortgagor, do hereby acknowledge that at the time of making and delivery of the within mortgage, the within mortgagee, _____, without additional cost to me, prepared for and delivered to me a full, true, perfect and complete copy of the within mortgage.

Dated this _____ day of _____, 19 _____.

_____, Mortgagor.

587. Chattel Mortgage on Crops.

KNOW ALL MEN BY THESE PRESENTS, that this mortgage, made the _____ day of _____, in the year one thousand nine hundred and _____, by _____, of _____, county of _____, state of South Dakota, mortgagor, to _____, mortgagee,

WITNESSETH, that the said mortgagor being justly indebted to said mortgagee in the sum of dollars, which is hereby confessed and acknowledged, ha for the purpose of securing the payment of said debt, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said mortgagee and assigns, all that certain personal property described as follows, to wit: All crops of every name, nature and description, consisting of acres of wheat, acres of oats, acres of barley, acres of corn, , which have been or may be hereafter sown, grown, planted, cultivated or harvested during the year A. D. 19 , , and until said debt is fully paid, on the following described real estate, situate, lying and being in said county of , and state of South Dakota, to wit: [*description*]

And it is especially covenanted and agreed, that this mortgage is a lien on said real estate, and the use thereof during said time, and that any purchaser or lessee of said real estate, or any portion thereof, takes the same subject to this mortgage, and covenants and agrees to cultivate the same for the benefit of the mortgagee herein, during said time, or until said debt hereby secured is paid.

And in case the said crops are not properly sown, planted, cultivated, harvested, threshed or cared for, the said mortgagee ha the right to enter on said land, and do all that is necessary to properly put in, harvest, thresh and market such crops, and reimburse himself for all labor and expense out of the proceeds thereof, the portion remaining to be applied on the debt hereby secured. Also, the following described personal property, to wit: [*description*] All the said property being now in the possession of said mortgagor in the , of , in the county of , and state aforesaid, and free from all encumbrance .

TO HAVE AND TO HOLD, ALL AND SINGULAR, the personal property aforesaid, forever, as security for the payment of the note and obligation hereinafter described. Provided always, and these presents are upon this express condition: That if the said mortgagor shall pay or cause to be paid unto the said mortgagee , executors, administrators or assigns, the sum of dollars, according to the conditions of certain promissory note payable to at ; \$, dated , 19 , due , 19 , with interest at per cent. per annum until paid; \$, dated , 19 , due , 19 , with interest at per cent. per annum until paid; \$, dated , 19 , due , 19 , with interest at per cent. per annum until paid, or any other note of said mortgagor given hereafter to the mortgagee herein, as a renewal hereof . Then these presents to be void and of no effect. But if default shall be made in the payment of said sum or sums of money, or the interest thereon, at the time the said note or notes shall become due, or if any attempt shall be made by the said mortgagor or any other person to dispose of or injure said property, or to remove said property, or any part thereof, from the said county of , or, if said mortgagor do not take proper care of said property, or if said mortgagee shall at any time deem sel insecure; then, thereupon and thereafter it shall be lawful, and the said mortgagor hereby authorize said mortgagee , executors, administrators or assigns, or authorized agent, to take said property,

wherever the same may be found, and hold or sell and dispose of the same and all equity of redemption, at public auction, with notice as provided by law, and on such terms as said mortgagee or agent may see fit, and said mortgagee may become the purchaser of said property at said sale, retaining such amount as shall pay the aforesaid note or notes and interest thereon, and an attorney's fee as provided by law, and such other expenses as may have been incurred, returning the surplus money, if any there may be, to the said mortgagor or assigns, and the said mortgagor hereby waive demand and personal notice of the time and place of sale. And as long as the conditions of this mortgage are fulfilled, the said mortgagor to remain in peaceful possession of said property, and in consideration thereof he agree to keep said property in as good condition as it now is, at own cost and expense.

I acknowledge that at the time of making and delivery of this mortgage a full, true, perfect and complete copy of the same was delivered to and received by me.

IN TESTIMONY WHEREOF, the said mortgagor ha hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signature.]

STATE OF SOUTH DAKOTA, }
County of , } ss

I, , the within mortgagor , do hereby acknowledge that at the time of the making and delivery of the within mortgage, the within mortgagee , without additional cost to me, prepared for and delivered to me a full, true, perfect, and complete copy of the within mortgage.

Dated this day of . 19 .

, Mortgagor.

TENNESSEE.

The following or other equivalent forms, varied to suit the precise state of facts, are sufficient for the purposes contemplated, without further circumlocution:

588. Chattel Mortgage, Statutory Form.

For a mortgage: "I hereby convey to A. B. the following land [*describing it*], to be void upon condition that I pay," etc.

589. Deed of Trust, Personalty, Statutory Form.

For a deed of trust: "For the purpose of securing to A B a note of this date, due at twelve months, with interest from date [*or as the case may be*], I hereby convey to C D, in trust, the following property [*describing it*]. And if the note is not paid at maturity, I hereby authorize C D to sell the property herein conveyed [*stating the manner, place of sale, notice, etc.*], to execute a deed to the purchaser, to pay of* the amount herein secured, with interest and costs, and to hold the remainder subject to my order."

Code of 1896, § 3680.

* So in original.

All mortgages and trusts of personalty shall be in writing, and proved and registered as hereinafter provided, to be valid against creditors of the bargainor, or purchasers under him for value and without notice. *Ibid.*, § 3664.

The provisions of foregoing sections do not apply to choses in action. *Ibid.*, § 3665.

The following writings may be registered:

(1) All agreements and bonds for the conveyance of real or personal estate.

(8) All mortgages and deeds of trust of either real or personal property. *Ibid.*, § 3697.

All deeds, bills of sale, agreements, and other instruments for conveyance or mortgage of personal property, shall be registered in county where vendor or person executing same resides, and, in case of his nonresidence, where the property is. *Ibid.*, § 3706.

Said instruments so proved or acknowledged and certified and registered, shall be received as evidence in any court or judicial tribunal of the state, subject, nevertheless, to be impeached and proved to be forgery, or to be otherwise inoperative, if the fact be so. *Ibid.*, § 3748.

All said instruments shall have effect between parties to same, and heirs and representatives, without registration; but as to other persons, not having actual notice of them, only from noting thereof for registration on books of register, unless otherwise expressly provided. *Ibid.*, § 3749.

All said instruments so registered shall be notice to all the world from time they are noted for registration, as prescribed in section 567, and shall take effect from said time. *Ibid.*, § 3750.

Any of said instruments first registered or noted for registration shall have preference over one of earlier date, but noted for registration afterwards, unless it is proved in a court of equity, according to rules of said court, that party claiming under subsequent instrument had full notice of previous instrument. *Ibid.*, § 3751.

Any of said instruments not so proved, or acknowledged and registered, or noted for registration, shall be null and void as to existing or subsequent creditors of, or bona fide purchasers from the makers without notice. *Ibid.*, § 3752.

In cases where suit is brought to obtain possession of personal property, or to enforce a lien or mortgage, suit may be brought in any county where any part of personal property may be found. *Ibid.*, § 4515.

No debtor shall make preferences between creditors by means of assignment, deed of trust, mortgage, deed, sale, pledge, or any other transfer or conveyance of all, or substantially all, of his property, estate, or assets, to or for benefit of preferred creditor or creditors, and all such instruments, conveyances, or transfers shall be illegal and void, and all of property, estate, and assets therein conveyed shall be distributed pro rata among all of such debtor's creditors, whether they be mentioned or intended and payment of their debts provided for or not. *Ibid.*, § 3144.

Whenever assignment, deed of trust, mortgage, deed, sale, or pledge, or other conveyance or transfer of part or portion of debtor's property, estate, or assets is made for purpose of preferring one or more creditors, or would have that effect, it shall be illegal and void, and all such property, estate, or assets shall be divided pro rata among all creditors of said debtors. *Ibid.*, § 3145.

Provisions of sections 3144-3148 shall not prevent any person from making mortgage, deed of trust, deed, sale, pledge, or other conveyance, for purpose of securing payment for property bought, credit given, or money loaned, or for money or supplies advanced to enable debtor to make a crop, if mortgage, deed of trust, deed, sale, pledge, or other conveyance is duly executed, acknowledged, and registered at time of buying property, extending credit, borrowing money, or obtaining advance of money and supplies, and in consideration of same. The sales or pledges of personal property,

accompanied by delivery, shall not be required to be acknowledged and registered Ibid., § 3149.

Attachments may be levied upon any real or personal property of either a legal or equitable nature, debts or choses in action, whether due or not due, in which defendant has an interest. Ibid., § 5260.

Jurisdiction is conferred upon county courts of several counties in state, to enforce vendors' liens and foreclose mortgages upon all sums under fifty dollars, and also to enforce all liens on all sums under fifty dollars in cases where chancery court alone would have jurisdiction if amount more than fifty dollars. Ibid., § 6035.

Rules of practice and pleading in use in chancery court on sums above fifty dollars shall be adopted. Ibid., § 6036.

Said county courts shall have same power to issue writs of possession to put purchaser in possession that chancery court has, and shall be governed by same rules. Ibid., § 6037.

The chancery courts have exclusive original jurisdiction of all cases of equitable nature, where debt or demand exceeds fifty dollars, unless otherwise provided by Code. Ibid., § 6089.

The maker of any registered mortgage or deed of trust of personal property, or any person, who shall dispose of their property conveyed in or covered by such conveyance, with purpose of depriving mortgagee, trustee, or any beneficiary of same, or any part thereof, of the proceeds, such person so disposing of such property shall be guilty of felony, whether party so offending had custody of property at time or not. Ibid., § 6588.

If person so disposing of property shall pay debt to secure which the mortgage was executed, together with all costs of criminal prosecution, before he is arraigned for trial, he shall be discharged, and not subject to further prosecution for the crime charged. Ibid., § 6591.

If conveyance be of goods or chattels, and be not on consideration deemed valuable in law, it shall be taken to be fraudulent, unless same be by will duly proved and recorded, or by deed acknowledged or proved and registered according to law, or unless possession remain with donee. Ibid., § 3151.

Possession of goods and chattels continued for five years, without demand made and pursued by due process of law, shall, as to creditors of possessor or purchasers from him, be deemed conclusive evidence that the absolute property is in such possessor, unless contrary appear by deed or will in writing, proved or acknowledged and registered. Ibid., § 3152.

In written contract of or for sale of railroad equipments or rolling stock, deliverable immediately or subsequently, at stipulated periods, by terms of which purchase money in whole or part is to be paid in the future, it may be agreed that title to property so sold or contracted to be sold shall not pass to or vest in vendee until purchase money fully paid or that vendee shall have lien thereon for unpaid purchase money, notwithstanding delivery to and possession by vendee; provided that the terms of credit for payment of purchase money shall not exceed fifteen years from execution of contract. Ibid., § 3587, as amended by Acts of 1903, chap. 199 (Supplement for 1897-1903, pp. 614, 615).

In written contract for leasing or renting railroad equipments or rolling stock, it may be stipulated that there be a conditional sale at termination of lease, and the rentals received may, as paid or when paid in full, be treated as purchase money, and title shall not vest in lessee or vendee until purchase money paid in full, notwithstanding delivery to and possession by lessee or vendee, subject, however, to proviso contained in section 3587. Ibid., § 3588.

Every such contract specified in sections 3587 and 3588 shall be valid and effectual, both in law and equity, against purchasers and creditors, if it is acknowledged by vendee or lessee like a conveyance of real estate, and registered in office of register of county in which, at time of execution thereof, is situated principal office of vendee or lessee in state, and in office of secretary of state, and each locomotive engine or car so sold or contracted to be

sold or leased, has name of vendor or lessor, or assignee, plainly placed or marked on each side, or is otherwise marked so as to indicate ownership. Ibid., § 3589.

590. Chattel Mortgage.

THIS INSTRUMENT WITNESSETH: that for and in consideration of _____, to _____ paid, _____ have this day bargained, sold, and conveyed to _____, the following described personal property, to wit: *[description]*

To HAVE AND TO HOLD the same for the following uses, purposes, and trusts, and none other, that is to say: That whereas, _____ indebted to the said _____ in the sum of _____, as evidenced by _____ certain note, bearing date as follows: One dated _____, for the sum of _____, and due, with interest, on the _____ day of _____, etc.

Now, if _____ shall pay said note, with interest, at maturity, then this sale and conveyance shall be void; but if _____ shall fail to pay said note, with interest, at maturity, or either one of them, then the others shall immediately become due, and the said _____ is authorized and empowered, after giving thirty days' notice of the time and place of such sale, to sell said property, or so much thereof as may be necessary to pay said indebtedness, or so much as remain unpaid. The proceeds of the sale of said property will be applied by said _____, first, to the payment of the expenses incident to this sale; second, to the payment of said indebtedness, or so much as remains unpaid; third, the remainder, if any, to be paid over to _____.

If any sale of said property, or any part thereof, is made under this mortgage, it shall be for cash.

Said property is now in possession of _____, and it is agreed by the maker of this mortgage, and the beneficiaries under it, that the possession of said property shall continue where it now is until such time as a sale under this mortgage becomes necessary to be made, and the said _____ agrees to surrender the possession of said property whenever a sale becomes necessary by the terms of this mortgage, without delay or any hindrance whatever, and without process of law.

This _____ day of _____, 19 _____.

[Signatures.]

Witness:

[Signature.]

TEXAS.

All reservations of title to or property in chattels as security for purchase-money, are chattel mortgages and, when possession delivered to vendee, are void as to creditors and bona fide purchasers, unless the reservations are in writing and registered as required of chattel mortgages; but nothing in this law shall be construed to contravene landlord and tenant act. Sayles' Civil Statutes (edition of 1897), article 2549, repeated as art. 3327.

Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as mortgage of or lien upon personal property, not accompanied by immediate delivery and followed by continued change of possession, is void against creditors of mortgagor or person making same, and subsequent purchasers and mortgagees or lienholders in good faith, unless instrument or copy is forthwith deposited with and filed in office of county clerk of county where property then situated, or if mortgagor or person making same be resident of state, then of county of which he is at

that time resident; but written contracts for conditional sale, lease or hire of railroad equipments and rolling-stock, by which purchase money is agreed to be paid at any time or times after date of contract, with reservation of title or lien in vendor, lessor or bailor until same fully paid, shall be recorded in office of secretary of state, in book of records to be kept for that purpose; and on payment of purchase-money and performance of terms and conditions stipulated in contract, a declaration in writing to that effect may be made by vendor, lessor or bailor, or assignee, on margin of record of contract, duly attested, or by a separate instrument acknowledged by lessor, vendor or bailor, or assignee, and recorded as aforesaid. *Ibid.*, art. 3328.

Upon receipt of such instruments clerk shall indorse thereon day and hour when deposited in his office for record, and shall keep same on file in office for inspection of all parties interested until satisfaction thereof shall be entered, as provided in article 3332; but if copy be presented to clerk for filing, instead of original instrument, he shall carefully compare copy with original, and same shall not be filed unless it is a true copy thereof, and a copy can be filed only when original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instrument for purpose of being recorded. *Ibid.*, art. 3329.

Certified copy of instrument so filed is evidence in like manner as original, unless execution of original denied under oath by party sought to be charged thereby; but party desiring to use such instrument shall file same in papers of cause before announcing ready for trial, and not afterwards; and such certified copy shall in all cases be received as evidence of filing and entry thereof in chattel mortgage record according to indorsement of clerk thereon. *Ibid.*, art. 3330.

County clerk shall keep book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and *cestui que trust*, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under head of property mortgaged it will be sufficient to enter general description of property pledged and particular place where located, and index shall be kept in manner as required for other records. *Ibid.*, art. 3331.

When debt secured by such instrument is paid or satisfied, it is duty of mortgagee, assignee, attorney or legal representative to enter or cause to be entered and attested by clerk, as aforesaid, satisfaction thereof, in record book in which instrument entered, which may be done under head of "remarks," and any instrument acknowledging payment or satisfaction need not be recorded at length, but entry as above provided showing same has been paid shall be sufficient, and original instrument or copy on file shall then be delivered to mortgagor or maker upon demand, or clerk may mail same to him. *Ibid.*, art. 3332.

Person making such instrument shall not remove property pledged from county, nor otherwise sell or dispose of same without consent of mortgagee; and in case of any violation of provisions of this article mortgagee shall be entitled to possession of property, and to have same then sold for payment of his debt, whether the same has become due or not. *Ibid.*, art. 3333.

Chattel mortgages and other instruments intended to operate as mortgages of or liens upon personal property shall not be recorded at length, and when deposited and filed in accordance with provisions of this law shall have the force and effect heretofore given to a full registration thereof, and all persons shall be thereby charged with notice thereof, and of rights of mortgage, assignee or representative thereunder. *Ibid.*, art. 3334.

Every deed, mortgage, or other writing respecting title of personal property, which by law ought to be recorded, shall be recorded in clerk's office of county court of that county in which property shall remain; and if

afterwards person claiming title under such deed, mortgage or other writing shall permit any other person in whose possession property may be to remove with same or any part thereof out of county in which same recorded, and shall not, within four months after removal, cause same to be recorded in county to which such property removed, such deed, mortgage, or other writing, for so long as it shall not be recorded in such last-mentioned county, and for so much of property as shall have been removed, shall be void as to all creditors and purchasers for valuable consideration without notice; but written contracts for conditional sale, lease, or hire of railroad rolling-stock and equipments by which purchase money is agreed to be paid at any time or times after date of such contract, with reservation of title or lien in vendor, lessor or bailor until same fully paid shall be recorded in office of secretary of state in book of records to be kept for that purpose, and on payment in full of purchase money and performance of terms and conditions stipulated in contract a declaration in writing to that effect may be made by vendor, lessor or bailor, or assignee, on margin of record of contract, duly attested, or by a separate instrument acknowledged by lessor, vendor, or bailor, or assignee, and recorded as aforesaid. *Ibid.*, art. 4651.

Every mortgage, deed of trust or other form of lien attempted to be given by owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of the business of such merchandise, and contemplating a continuance of possession of said goods and control of said business, by sale of said goods by said owner, shall be deemed fraudulent and void. *Ibid.*, art. 2548.

Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with foreclosure of plaintiff's lien on property subject thereto, and (except in judgments against executors, administrators and guardians) that an order of sale shall issue to sheriff or any constable of county where such property may be, directing him to seize and sell same as under execution, in satisfaction of judgment; and if the property cannot be found, or if proceeds of sale be insufficient to satisfy judgment, then to make the money, or any balance thereof remaining unpaid, out of any other property of defendant, as in case of ordinary executions. *Ibid.*, art. 1340.

Receivers may be appointed by any judge of court of competent jurisdiction in state, in following cases:

2. In action by mortgagee for foreclosure of mortgage and sale of mortgaged property when it appears that the property is in danger of being lost, removed or materially injured, or that the condition of mortgage has not been performed, and property is probably insufficient to discharge mortgage debt. *Ibid.*, art. 1465.

A defendant in execution cannot point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale. *Ibid.*, art. 2346.

Property which judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if purchaser, mortgagee or trustee shall point out other property of debtor in county sufficient to satisfy execution. *Ibid.*, art. 2347.

Goods and chattels pledged, assigned or mortgaged as security for debt or contract, may be levied upon and sold on execution against person making pledge, assignment or mortgage subject thereto; and purchaser shall be entitled to possession when it is held by pledgee, assignee or mortgagee, on complying with conditions of pledge, assignment or mortgage. *Ibid.*, art. 2353.

All chattel mortgages hereafter filed with county clerks of State in accordance with law shall be prima facie presumed to have been paid after expiration of six years from date of maturity of debts such mortgages were intended to secure, unless owner or holder of mortgage, his agent or attorney, shall, within three months next before expiration of said time, file affidavit in writing with county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed the clerk shall,

at expiration of said time, make disposition of such mortgage, either by delivering same to maker or by burning same. [Acts 1907, p. 272.] § 1 at p. 228 of Supplement of 1908 to Sayles' Civil Statutes of 1897.

UTAH.

Unless possession of personal property delivered to and retained by mortgagee, no mortgage thereof is valid against rights and interests of any person other than the parties, unless:

1. The mortgage, duly witnessed by at least one person, provide that the property may remain in possession of mortgagor;

2. Mortgage be accompanied by affidavit of parties, or, in case any party is absent, affidavit of parties present and that of agent or attorney of absent party, that same made in good faith to secure amount named therein and without design to hinder or delay creditors of mortgagor;

3. Mortgage, or copy, be filed in office of recorder of county where mortgagor resides, or, in case he is non-resident of state, in office of recorder of county or counties where property may be at time of execution of mortgage. Compiled Laws of 1907, § 150.

Mortgage need not be acknowledged, and recorder shall file same and indorse thereon time of filing, and it shall be as valid as if recorded. *Ibid.*, § 151.

Action for foreclosure of mortgage of personal property or for enforcement of any lien thereon, may be conducted in manner provided by law for foreclosure of mortgage or lien upon real property, and without right of redemption; or mortgage of personal property containing power of sale upon default being made in condition of mortgage, authorizing exercise of such power, may be foreclosed by advertisement, in manner and upon notice hereinafter provided. *Ibid.*, § 152.

When mortgagee or assignee has commenced foreclosure by advertisement, and it shall appear by affidavit of mortgagor or agent or attorney, to satisfaction of judge of district court of county where mortgaged property situated, that mortgagor has legal counterclaim or any other valid defense against collection of whole or any part of amount claimed to be due on mortgage, such judge may, by order to that effect, enjoin mortgagee or assignee from foreclosing mortgage by advertisement and direct that all further proceedings for foreclosure be had in district court properly having jurisdiction of subject-matter. *Ibid.*, § 153.

Chattel mortgage, when satisfied, shall be discharged by entry by mortgagee, agent, assignee, or legal representative, on margin of index, which shall be attested by recorder without fee; or recorder may discharge same on presentation of order in writing duly signed and acknowledged. After full performance of conditions of mortgage, any mortgagee, agent, assignee, or legal representative who shall wilfully neglect, for space of ten days after being requested, to discharge same, shall be liable to mortgagor or assigns in sum of \$50 damages, and also for all actual damages sustained by such neglect or refusal. *Ibid.*, § 154.

Every mortgage so filed shall be void against creditors of person making same, or subsequent purchasers or mortgagees in good faith, after expiration of one year after filing, unless within thirty days after expiration of term of one year from filing, and within thirty days after expiration of each year thereafter, mortgagee, agent or attorney, shall make affidavit exhibiting interest of mortgagee in property at time last aforesaid, claimed by virtue of such mortgage, and if such mortgage is to secure payment of money, amount yet due and unpaid, and shall file same with county recorder, to be attached to instrument or copy on file to which it relates: but no mortgage of personal property shall be valid against creditors of mortgagor or subsequent purchasers or mortgagees in good faith, after expiration of five years from date of original filing. *Ibid.*, § 155.

If such affidavit be made and filed before any purchase of such mortgaged property shall be made, or other mortgage deposited, or lien obtained thereon,

in good faith, it shall be as valid to continue in effect such mortgage as if same had been made and filed within period above provided. *Ibid.*, § 156.

Personal property mortgaged may be taken on attachment, if any legal cause for attachment exists, or on execution issued at suit of creditor of mortgagor; but, before property so taken, officer must pay or tender mortgagee amount of mortgage debt and interest at place where by its terms it is made payable, if such place is within state. If it specifies no place of payment, or if payable without state, then he must deposit amount thereof with county recorder of county wherein mortgage filed, payable to mortgagee or order. *Ibid.*, § 157.

Certified copy of mortgage of personal property, made and filed as provided in this title (on Chattel Mortgages, title 12, §§ 150-168), may be read in evidence in any court in state without further proof of execution of original, if original out of control of person wishing to use it. *Ibid.*, § 158.

Provisions of foregoing sections shall extend to and include all such bills of sale, deeds of trust, and other conveyances of personal property as shall have effect of mortgage or lien upon such property. *Ibid.*, § 159.

Notice that mortgage will be foreclosed by sale of mortgaged property or part thereof, shall be given by advertisement published at least once a week for two successive weeks prior to sale in newspaper printed in county where sale is to take place, or, in case no newspaper printed therein, by posting up notices at least ten days prior to sale in at least five public places in such county, two of which shall be in precinct where mortgaged property is, to be offered for sale. *Ibid.*, § 160.

Such notice shall specify date of mortgage and where filed, names of mortgagor and mortgagee and assignee of mortgagee, if any, the amount claimed to be due thereon at time of first publication or posting of notice, description of mortgaged property conforming substantially with that contained in mortgage, and time and place of sale. *Ibid.*, § 161.

All sales shall be made within thirty days after seizure of property, unless postponed as hereinafter provided. All sales shall be made by public auction, and shall be commenced between hours of twelve m. and four o'clock p. m., and shall be held in county where mortgage first filed, or in any county where property may have been removed by consent of parties and in which mortgage duly filed, and in view of property so being sold. Mortgagee, assignees, and his or their legal representatives, may fairly and in good faith purchase any of property offered at sale, and when mortgage foreclosed as herein provided all right and equity of redemption which mortgagor may or might have had shall be extinguished. *Ibid.*, § 162.

Sale may be postponed to definite time by public announcement made at time and place of sale, with consent of mortgagor, if present; but if sale postponed for more than one week, notice shall be given by publication, or by posting as in first instance. *Ibid.*, § 163.

Within ten days after sale of mortgaged property as hereinbefore provided, mortgagee or assignee shall make, or cause to be made, a statement under oath of proceedings under sale, specifying particularly property sold, amount received therefor and costs and expenses, which shall be itemized, and disposition made by him of proceeds of sale, and shall deliver same to mortgagor or send same to him by registered letter; and on failure so to do shall forfeit to mortgagor \$25 damages. *Ibid.*, § 164.

Out of proceeds of sale, person making sale shall pay, first, the costs and expenses of foreclosure, second, amount of mortgage debt due to person entitled thereto, and, third, balance, if any, to owner of mortgaged property. Fees for publication of notice shall in no case exceed \$3. Fee of person crying sale shall be \$2 a day. *Ibid.*, § 165.

Mortgagor, agent, servant or employe of mortgagor of personal property who shall, during time mortgage remains in force, destroy, sell, conceal, or otherwise dispose of whole or any part of mortgaged property, or who shall remove same or any part from state without written consent of mortgagee, legal representatives or assigns, is guilty of obtaining money under false pretenses, and, on conviction, shall be punished by fine not exceeding three

times value of property described in mortgage, or by imprisonment, or by both fine and imprisonment. Term mortgage in this section shall embrace deeds of trust and all instruments intended as security for debt. *Ibid.*, § 166.

It is unlawful for husband, where relation of husband and wife exists, to create lien, by chattel mortgage or otherwise, upon personal property owned by him and exempt by law to resident heads of families from seizure and sale upon attachment, execution, or other process issued from any court in state, without consent of wife; and no such mortgage of personal property shall be valid unless executed by both husband and wife. *Ibid.*, § 167.

Provisions of this title shall not apply to contracts by railway company owning or operating railway in state, for possession, use, and conditional purchase of rolling stock and equipments to operate such railway, and containing condition that title shall not pass until full payment of purchase price; and such contract is valid as to all persons without recording same. *Ibid.*, § 168.

All papers, notices, and instruments of writing required by the laws of Utah to be filed in office of county recorders, shall be recorded. *Ibid.*, § 632x.

When personal property, choses in action, or effects of defendant in hands of garnishee are mortgaged or pledged, or in any way liable for payment of a debt to him, plaintiff may, under order of court for that purpose, pay or tender amount due to garnishee, and thereupon garnishee shall deliver personal property, choses in action, and effects to sheriff, as in other cases. *Ibid.*, § 3107.

There can be but one action for recovery of any debt or enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this chapter (on Foreclosure of Mortgages, chap. 59, §§ 3498-3505). Judgment shall be given adjudging amount due, with costs and disbursements, and sale of mortgaged property, or part thereof, to satisfy amount and directing sheriff to proceed and sell same according to provisions of law relating to sales on execution. Such judgment may be docketed at any time. *Ibid.*, § 3498.

If it appears from return of officer making sale that proceeds are insufficient, and a balance remains due, execution may be issued for such balance as in other cases; but no such execution shall issue until after sale of mortgaged property and application of amount realized as aforesaid. *Ibid.*, § 3499.

No person holding a conveyance from or under mortgagor of mortgaged property, or having lien thereon, which conveyance or lien does not appear of record in proper office, at time of commencement of action, need be made party to action, and judgment therein rendered, and proceedings therein had, are as conclusive against party holding such unrecorded conveyance or lien as if he had been made a party to action. *Ibid.*, § 3500.

If there is surplus money after payment of amount due on mortgage, lien, or incumbrance, with costs, court may cause same to be paid to person entitled to it, and in meantime may direct it to be deposited in court. *Ibid.*, § 3501.

If debt for which mortgage, lien or incumbrance is held is not all due, as soon as sufficient of property has been sold to pay amount due, with costs, sale must cease, and afterwards, as often as more becomes due for principal or interest, court may, on motion, order more to be sold. But if property cannot be sold in portions without injury to parties, whole may be ordered to be sold in first instance, and entire debt and costs paid, there being a rebate of interest where such rebate is proper. *Ibid.*, § 3502.

In all cases of foreclosure, when attorney or counsel fee is claimed by plaintiff, no other or greater amount shall be allowed or decreed than sum which shall appear by the evidence to be charged by and paid to attorney for plaintiff; and if it shall appear there is agreement or understanding to divide such fees between plaintiff and his attorney, or between attorney and any other person except attorney associated with him in the cause, only amount to be retained by attorney or attorneys shall be decreed against defendant. *Ibid.*, § 3504.

In all cases of foreclosure by proceeding in court, attorney's fee shall be fixed by court in which proceedings of foreclosure are had, any stipulation in mortgage to contrary notwithstanding. *Ibid.*, § 3505.

The justices' courts shall have concurrent jurisdiction with district courts within their respective precincts and cities, in actions to enforce and foreclose liens on personal property, where amount of liens and value of property are each less than \$300. *Ibid.*, § 689.

The city court shall have concurrent jurisdiction with district courts within their respective counties, in actions to enforce and foreclose liens on personal property, where amount of liens and value of property are each less than \$500, and in any action in equity relating wholly to personal property where sum involved and value of property are each less than \$500. *Ibid.*, § 686x-12.

In contract for sale of railroad or street railway equipment or rolling stock it may be agreed that title to property sold or contracted to be sold, although possession delivered immediately or subsequently, shall not vest in purchaser until purchase price paid, or that seller shall have lien for unpaid purchase money. And in contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at termination of contract, and rentals or amounts to be received under contract may, as paid, be treated as purchase money, and title shall not vest in lessee or bailee until purchase price paid in full, and until terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract is valid against subsequent judgment creditor or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties and acknowledged by vendee, lessee, or bailee, as case may be, or duly proved, like a deed, and filed for record in office of secretary of state of this state, and unless each locomotive engine or car so sold, leased, or hired, or contracted to be sold, leased, or hired as aforesaid, shall have name of vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side, followed by word "owner," or "lessor," or "bailor," as case may be. These contracts shall be recorded by secretary of state in book of records to be kept for that purpose. And on payment of purchase money and performance of terms and conditions stipulated in contract, a declaration in writing to that effect shall be made by vendor, lessor, or bailor, or assignee, on margin of record of contract, duly attested, or by separate instrument acknowledged by vendor, lessor, or bailor, or assignee, and recorded as aforesaid. *Ibid.*, §§ 456x-2, and 456x-3.

Receiver may be appointed by court in which an action is pending or has passed to judgment, or by the judge thereof, in an action by a mortgagee for foreclosure of mortgage and sale of mortgaged property, where it appears that the property is in danger of being lost, removed, or materially injured, or that condition of mortgage has not been performed, and that property is probably insufficient to discharge mortgage debt. *Ibid.*, § 3114.

591. Chattel Mortgage.

, of , county of , state of , as mortgagor, for and in consideration of the sum of dollars, in hand paid, hereby bargain and sell to , of , county of , state of , as mortgagee, the personal property now situated and being at , in , county of , state of , described as follows, to wit: [*description*] and all other movable goods or property of any description of whatsoever kind, absolutely owned by mortgagor on said premises, or where known to be kept, and all future increase of goods.

THIS INSTRUMENT is executed as a chattel mortgage, to secure the payment of certain promissory note of even date herewith, signed by said mortgagor , and payable in gold coin to the order of said mortgagee at the office

of _____, in _____, for the sum named above, payable _____ after date, with interest as shown in said note, interest payable monthly _____.

THE MORTGAGOR AGREE to pay all taxes that may be levied on account of this mortgage for its protection. To insure the property herein described in such sum as mortgagee may direct, making loss, if any, payable to him, and pay for such insurance in advance.

IT IS EXPRESSLY AGREED, by and between the parties hereto, that the said property shall remain in the possession of the mortgagor until default be made in the performance of some condition thereof; that in case default be made in payment of any tax, assessment or lien that may exist against said property, or any portion thereof, then the said mortgagee may, at his option, pay same, and the amount paid therefor shall become a part of the debt and be subject to all the conditions of the mortgage and draw interest at the same rate as the original debt; that in case default be made in the payment of said note or any interest thereon, when due, or if any sale be made or attempted, or any removal be made, or attempted, of said property, or any portion thereof, from the premises aforesaid, without the written consent of mortgagee, or should the mortgagee, or his assigns, at any time decide that the property is insufficient security for the payment of the indebtedness secured hereby, then and in that event the said mortgagee or his assigns may declare the entire indebtedness due and payable, and the said mortgagee or his assigns, or the duly authorized agent or attorney of said mortgagee, may at once take immediate possession of said property, using all necessary force to accomplish such object, and may remove the same from said premises, or wherever found, and immediately advertise for sale and sell the said mortgaged property at public auction, or so much thereof as may be necessary to pay the said mortgage debt, as stipulated aforesaid, interest and costs of sale including _____ dollars attorneys' fees, said notice of sale, contents of said notice, and distribution of proceeds to be conducted and made as provided by the statutes of the state of _____. If from any cause the proceeds of the sale of said property shall fail to satisfy said debt, interest, costs and expenses, including attorneys' fees, said mortgagor agree to pay the deficiency on demand.

SHOULD ANY DEFAULT be made by the mortgagor in the payment of the amount due under this mortgage, and this mortgage be foreclosed, by foreclosure in court, the mortgagor agree to pay the attorney, or agent of mortgagee an attorney's fee of _____ dollars, to be added to the costs of foreclosure.

FOR THE PURPOSE of obtaining the above loan, the mortgagor represent that _____ lawfully possessed of the said property herein described, and that the same is free from any and all encumbrances and liens whatsoever.

Should _____ change _____ postoffice address, or remove any of said property from the premises where it now is, without first notifying the said mortgagee herein _____ agree to pay all expenses incurred and reasonable fees for ascertaining said new address.

WITNESS the hand of the said mortgagor this _____ day of _____, 19 _____

[Signature.]

Signed and delivered in the presence of

[Signature.]

AFFIDAVIT OF MORTGAGOR AND MORTGAGEE.

STATE OF _____, }
 County of _____, } ss.

_____, mortgagor, and _____, mortgagee, named in the foregoing mortgage, being duly sworn severally declare each on oath, that this chattel mortgage is made in good faith, to secure the amount and debt therein specified, and without any design to hinder or delay the creditors of said mortgagor .

[Signatures.]

Subscribed and sworn to before me,
 this _____ day of _____, 19 _____.

_____, *Notary Public.*

My commission expires _____.

VERMONT.

All personal property is subject to mortgage agreeably to provisions of this chapter (on Mortgages of Personal Property, chap. 123, §§ 2620-2641). Public Statutes of 1906, § 2620.

Mortgage of personal property is not valid either between the parties or otherwise unless in writing and recorded within thirty days from execution in office of town clerk of town where mortgagor resides, or, if he resides out of state, in town where property situated. *Ibid.*, § 2621.

Mortgagor and mortgagee, or, in absence of mortgagee, his agent or attorney, shall make and subscribe affidavit in substance as follows:

592. Affidavit to Chattel Mortgage.

"We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose, and that the same is a just debt, due and owing from the mortgagor to the mortgagee."

Such affidavit with certificate of oath signed by the authority administering same shall be appended to mortgage, and recorded therewith. *Ibid.*, § 2622.

When corporation is party to mortgage, affidavit required may be made and subscribed by a director, trustee, cashier or treasurer thereof, or by person authorized on part of corporation to make or receive mortgage; when partnership is party to mortgage, affidavit may be made and subscribed by one member thereof. *Ibid.*, § 2623.

If mortgage given to indemnify mortgagee against liability assumed, or to secure fulfillment of agreement other than payment of debt due from mortgagor to mortgagee, or given to a trustee to secure bonds issued or to be issued thereunder, such liability, agreement or obligation shall be stated specifically in condition of mortgage; and affidavit shall be so varied as to verify validity and justice of liability, agreement or obligation. *Ibid.*, § 2624.

When condition of chattel mortgage fulfilled, mortgagee shall, within thirty days thereafter, cause mortgage to be discharged of record. Person who neglects or refuses so to do shall be fined not more than fifty dollars nor less than five dollars. *Ibid.*, § 2625.

Mortgages of personal property may be discharged by mortgagee, assignee, executor, administrator, agent or attorney, as mortgages of real estate. *Ibid.*, § 2626.

If mortgagee, assignee or executor or administrator of either, after performance of condition before or after breach thereof, or after tender or per-

formance of condition at or after time fixed for performance, does not, within ten days after being thereto requested by person entitled to redeem, discharge mortgage on record, he shall forfeit to person entitled to redeem, the sum of ten dollars and damages occasioned thereby, to be recovered in action on case. *Ibid.*, § 2627.

Town clerk shall keep book of records for mortgages of personal property, record therein any mortgage, transfer or discharge, and on officer's return of sale upon any mortgage, make a reference upon margin of record of such return to volume and page of record of mortgage, and a reference upon margin of such record to volume and page of record of such return, and give certified copy thereof, when requested, on payment of his fees at rate of ten cents a folio, and certify time when same is received and recorded, and keep alphabetical index of mortgagors and mortgagees. *Ibid.*, § 2628.

Personal property not exempt from attachment, encumbered by chattel mortgage, may be attached on mesne process and sold on execution in same manner as unencumbered personal property, in any action against mortgagor and mortgagee for recovery of debt or demand for which both mortgagor and mortgagee are adjudged holden, and whole interest in such property shall pass to purchaser. Word "mortgagee," as used in this section, shall include assignee of mortgagee, or other person holding mortgagee's interest. *Ibid.*, § 2629.

No personal property upon which such security is made shall be removed from state without consent of mortgagor and mortgagee or assigns. *Ibid.*, § 2630.

Mortgagor of personal property shall not sell nor pledge such property, without consent of mortgagee in writing upon back of mortgage, and on margin of record thereof in office where recorded. *Ibid.*, § 2631.

Mortgagor shall not execute a second or subsequent mortgage of personal property, while same is subject to previously existing mortgage given by him, unless existence of previous mortgage is set forth in subsequent one. *Ibid.*, § 2632.

Mortgagor violating a provision of three preceding sections shall be fined not more than double the value of property so wrongfully removed from state, sold, pledged or mortgaged, one-half to use of party injured, and other half to use of the treasury liable for the costs of prosecution. *Ibid.*, § 2633.

Justices shall have concurrent jurisdiction with county court of offenses under four preceding sections. *Ibid.*, § 2634.

When condition of mortgage of personal property is broken, mortgagor or person holding under him, or holding subsequent mortgage, may redeem same by paying or tendering to mortgagee amount due on such mortgage, with reasonable costs and expenses incurred by such breach of condition, before a sale. *Ibid.*, § 2635.

Mortgagee or assignee may, after thirty days from time of condition broken, cause mortgaged property, or part, to be sold at public auction by public officer at public place in town where mortgagor resides or where property is, in case at least ten days' notice of time, place and purpose of sale has been posted in two or more public places in such town. *Ibid.*, § 2636.

Mortgagee or assignee shall notify mortgagor or person holding under him, and persons holding subsequent mortgages, of time and place of sale, either by notice in writing delivered to him, or left at his abode, if within town, or sent by mail if he does not reside in such town, at least ten days before sale. *Ibid.*, § 2637.

Officer making sale shall, within thirty days thereafter, make a return of his doings and file same in town clerk's office where mortgage recorded, and pay town clerk ten cents a folio for recording same, which shall be taxed in costs of sale. Fees of officer for selling the property shall be same as in case of sale on execution. The return shall particularly describe articles sold, and state amount received for each, and shall operate as discharge of lien created by mortgage. *Ibid.*, § 2638.

Proceeds of such sale shall be applied to payment of demand secured by mortgage, and costs and expenses of keeping and sale; and residue shall be paid to persons holding subsequent mortgages, in their order; and balance shall be paid to mortgagor, or persons holding under him, on demand. *Ibid.*, § 2639.

Machinery attached to or used in a shop, mill, quarry, mine, printing office, or factory may be mortgaged by deed, executed, acknowledged and recorded as deeds of real estate. Such mortgages may be assigned, discharged or foreclosed as mortgages of real estate. *Ibid.*, § 2640.

If machinery is mortgaged with real estate, equity of redemption in such machinery and real estate may be attached and sold on execution as real estate is now sold. *Ibid.*, § 2641.

When assignment of mortgage of real estate, or of personal property, recorded and mortgage itself not recorded therewith, town clerk shall make memorandum on margin of record of mortgage, giving number of book and page where assignment recorded. *Ibid.*, § 3456.

A town clerk shall record instruments acknowledging satisfaction of mortgage, when executed and acknowledged according to law, on margin of record of mortgage or in suitable book kept for that purpose; he shall record any satisfaction and make memorandum on margin of record of mortgage discharged, giving number of book and page where such satisfaction is recorded. *Ibid.*, § 3455.

No lien reserved on personal property sold conditionally and passing into hands of conditional purchaser is valid against attaching creditors or subsequent purchasers without notice, unless vendor takes written memorandum, signed by purchaser, witnessing such lien, and sum due thereon, and causes it to be recorded in office of clerk of town where purchaser resides, if he resides in state, otherwise in office of clerk of town where vendor resides, within thirty days after property delivered. *Ibid.*, § 2663.

Liens on personal property sold conditionally may be discharged by entry on margin of record thereof, in office of clerk where recorded, signed by vendor, executor, administrator, assignee or attorney, acknowledging satisfaction of lien, or by an entry in the writing creating lien signed as aforesaid, acknowledging satisfaction, duly recorded on margin of record of lien, or by release of lien signed as aforesaid and recorded in such office. *Ibid.*, § 2664.

If vendor, assignee or executor or administrator of either, after performance of condition before or after breach, does not, within ten days after being thereto requested, and after tender of reasonable charges, discharge lien in one of ways provided in preceding section, he shall forfeit to person entitled to redeem, the sum of ten dollars and damages occasioned thereby, to be recovered in action on case. *Ibid.*, § 2665.

Vendor of personal property sold conditionally, with lien reserved thereon, or his assignee, may after thirty days from time of condition broken, cause property on which lien exists, or part thereof, to be sold at public auction by public officer in public place in town where person giving lien resides or where property is, in case at least ten days' notice of time, place, and purpose of sale has been posted in two or more public places in such town; and at least ten days' notice of such sale shall be given to vendee or person holding under him, of time and place of sale, either by notice in writing, delivered to him or left at his abode, if living within town, or sent by mail if he does not reside in such town; and, if property is not redeemed by payment of amount due and costs and expenses incurred by such breach of condition, the property shall be sold as posted. *Ibid.*, § 2666.

Proceeds of sale shall be applied to payment of lien and costs and expenses of keeping property and sale; and balance shall be paid to vendee or person holding under him, on demand. *Ibid.*, § 2667.

Officer selling property shall make return of his doings in same manner as required in sale upon mortgage of personal property, and his return shall have like effect, and he shall receive same fees. *Ibid.*, § 2668.

No personal property sold conditionally, upon which there is reserved a lien duly recorded, shall be removed from state without consent of vendor or assignee *Ibid.*, § 2669.

Person having possession of personal property with lien thereon duly recorded, with intent to defraud, before performance of condition precedent to acquiring absolute title thereto, who sells same without consent of vendor or assignee, or, with intent to defraud, conceals or aids in concealing personal property upon which there is such a lien, or removes same from state without consent of vendor or assignee, shall be fined not more than double the value of property so wrongfully sold, concealed or removed, one-half to use of party injured, and other half to use of treasury liable for costs of prosecution. *Ibid.*, § 2670.

Justices shall have concurrent jurisdiction with county court of offenses under preceding section. *Ibid.*, § 2671.

Provisions of this chapter (on Liens, chap. 124, §§ 2642-2673), in so far as inconsistent, shall not apply to contracts of the kind mentioned in section 4389. *Ibid.*, § 2672.

In contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that title to property sold or contracted to be sold, although possession may be delivered immediately or subsequently, shall not vest in purchaser until purchase price fully paid, or that seller shall have lien for unpaid purchase money; and, in contract for leasing or hiring such property, it may be stipulated that there be a conditional sale at termination of contract, and rentals or amounts to be received under contract may, as paid, be treated as purchase money, and title shall not vest in lessee or bailee until purchase price paid in full and terms of contract fully performed, notwithstanding delivery and possession; but no such contract is valid against subsequent creditor, or subsequent bona fide purchaser for value without notice, unless evidenced by instrument executed by parties and acknowledged by vendee, lessee or bailee, as case may be, or duly proved like a deed, and filed for record in office of secretary of state, and unless each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, shall have name of vendor, lessor or bailor plainly marked on each side, followed by word "owner," or "lessor," or "bailor," as case may be. *Ibid.*, § 4389.

Contracts authorized by preceding section shall be recorded by secretary of state in book of records to be kept for that purpose. On payment in full of purchase money, and performance of terms and conditions stipulated in such contract, declaration in writing to that effect may be made by vendor, lessor or bailor, or assignee, on margin of record of contract, duly attested, or by separate instrument, acknowledged by vendor, lessor or bailor, or assignee, and recorded as aforesaid. *Ibid.*, § 4390.

Mortgages of railroad franchises, furniture, cars, engines and rolling stock, when properly executed and recorded, shall vest in mortgagee a mortgage interest in and lien upon such property, without delivery or change of possession; and, for purpose of mortgage, all such property shall be deemed part of realty. This section shall not prevent such furniture, cars, engines and rolling stock from being attached by person having claim against corporation owning such property, for injury sustained on its road by negligence of corporation, or for services rendered, or materials furnished to keep road in repair or to run same, or for liabilities as common carriers, or for loss of property while in possession of corporation; and such property, when so attached, may be taken, held and disposed of as though not mortgaged. *Ibid.*, § 4388.

Person who sells or disposes of personal property, or causes same to be sold or disposed of by another upon which there is lien created by previous attachment or conditional sale, or upon which he has previously given bill of sale, without giving notice to purchaser of lien or bill of sale, with intent to defraud, shall be imprisoned. *Ibid.*, § 5785.

Whenever word "mortgagee" occurs in the six following sections, it shall be construed to mean mortgagee, assignee of mortgagee, or other person holding his interest. *Ibid.*, § 1695.

When mortgagor of personal property summoned as trustee of mortgagee, plaintiff may direct officer serving writ to attach mortgagee's interest in property. Officer when so directed shall attach interest by leaving copy of writ in town clerk's office where mortgage recorded, with return thereon describing property and interest of mortgagee therein; and town clerk shall enter upon margin of record of mortgage, a statement that interest of mortgagee is attached, and make other record and entry required by law to be made where property attached by copy. *Ibid.*, § 1696.

Property so attached shall be holden to satisfy any execution issuing upon judgment rendered against trustee in original action, or in action on judgment rendered against trustee in original action, in same manner and to same extent that property attached as property of defendant in action and taken into actual possession of officer making attachment is held to satisfy execution against such defendant. *Ibid.*, § 1697.

Mortgagee whose interest is so attached shall not sell or dispose of such property while attachment in force, or while liability of trustee is undetermined or continues. *Ibid.*, § 1698.

Property so attached may be sold upon any execution issuing by reason of judgment rendered against trustee, either in original action or in action on judgment rendered in original action, and title and interest of mortgagor, mortgagee or other person, to and in property, shall pass to purchaser at sale. *Ibid.*, § 1699.

When action pending in county or supreme court, if trustee files with clerk of such court a bond to plaintiff in sum equal to amount for which attachment is directed in writ, with sufficient sureties, approved by clerk, conditioned that trustee will pay judgment rendered against him in action, and also bond to defendant in penal sum double amount of mortgage debt, with sureties approved as aforesaid, conditioned that he will pay balance due upon mortgage after paying judgment, and that if discharged as trustee he will pay amount secured by mortgage, he may sell property; and purchaser shall hold same released from mortgage and attachment. *Ibid.*, § 1700.

When action pending in county or supreme court, if mortgagee files with clerk of court bond in sum equal to amount for which attachment directed in writ, with sufficient sureties approved by clerk, conditioned that he will pay judgment that may be rendered against him, trustee shall be discharged and attachment dissolved. *Ibid.*, § 1701.

Personal property not exempt from attachment, subject to mortgage, pledge or lien, may be attached, taken on execution and sold as property of mortgagor, pledgor or general owner, in same manner as other personal property, except as hereinafter otherwise provided. *Ibid.*, § 1768.

Officer making attachment or taking property on execution may make written demand of mortgagee, pledgee, or holder of lien for account in writing, under oath, of amount due upon debt secured by mortgage, pledge or lien, and may retain property in custody until same is given without tender or payment. Upon receiving demand, account shall be rendered within fifteen days by resident of state and thirty days by non-resident. If account not rendered within that time, or if false account rendered, property may be holden and sold discharged from mortgage, pledge or lien. *Ibid.*, § 1769.

If debt due at time of rendering account, creditor so attaching or causing property to be taken on execution may, within ten days after account rendered, pay or tender amount so rendered to mortgagee, pledgee, or holder of lien, and retain and sell property free and clear of mortgage, pledge or lien. *Ibid.*, § 1770.

If debt not due at time of rendering account, but becomes due before time fixed by officer making attachment or levy of execution for sale of property, such creditor, within ten days after debt due and before sale, may

pay or tender amount to mortgagee, pledgee, or holder of lien, and retain and sell property as provided in preceding section. *Ibid.*, § 1771.

If debt not due at time fixed by officer for sale of property, creditor may offer to pay debt to mortgagee, pledgee, or holder of lien, and, if payment accepted, same proceedings may be had as provided in second preceding section. *Ibid.*, § 1772.

If creditor pays or tenders debt as provided in three preceding sections to mortgagee, pledgee, or holder of lien, he shall be subrogated to all rights of mortgagee, pledgee or holder, and may cause same to be sold in same manner that unencumbered personal property may be sold on mesne or final process; and proceeds of sale shall be applied, first, in payment of sum paid by creditor to mortgagee, pledgee or holder; second, to satisfy execution. *Ibid.*, § 1773.

If mortgagee, pledgee, or holder of lien duly renders such account, attaching creditor may, whether or not debt is due, cause property to be sold subject to mortgage, pledge or lien, without first paying or tendering amount due on debt secured thereby. *Ibid.*, § 1774.

If mortgagor, pledgor or conditional vendee of property sold on execution under provisions of this chapter (on Attachment and Sale of Property subject to Mortgage, Pledge or Lien, chap. 86, §§ 1768-1781) fails or refuses to discharge lien after it becomes due and payable, and within ten days after written notice so to do is served upon him by purchaser of whole or part, person so purchasing may tender and pay to holder of mortgage, pledge or lien, or conditional vendor, amount due such creditor upon whole of property, and upon such tender or payment shall be subrogated to all rights of original mortgagee, pledgee or conditional vendor, and may hold same as security for amount so paid in discharge of original claim, with sum paid by him on execution sale, with interest upon such sums, and shall have same benefit of foreclosure, sale and disposition of property, that original mortgagee, pledgee or conditional vendor would have had under his claim. *Ibid.*, § 1775.

In sales of personal property, where by contract payment of purchase money is made condition precedent to transfer of title, if property in pursuance of contract has passed into possession of vendee, and purchase money or part remains unpaid, creditor of vendee may attach or levy his execution upon property, and upon payment or tender of unpaid purchase money to vendor, agent or attorney, within ten days after notice of amount thereof remaining unpaid, may hold property discharged from claim of vendor. *Ibid.*, § 1776.

Officer making such attachment or levy shall hold and dispose of property like other personal property attached or levied upon, and from proceeds of sale pay to creditor amount by him paid or tendered to vendor, and apply residue upon execution. *Ibid.*, § 1777.

If vendor refuses to receive amount so tendered him, and brings suit on account of attachment or levy, defendant may, under general issue, give evidence of tender in bar of action, and on proof thereof and payment of money tendered into court, recover his costs, unless it appears amount so tendered was less than sum due vendor, as residue of purchase money. *Ibid.*, § 1778.

Real or personal estate of a deceased person which is mortgaged or pledged, or has lien thereon, for security of debt, may, on application of executor, administrator or creditor, be sold under order of probate court; and net proceeds shall be applied towards payment of such secured debt; and debt, if proved before the commissioners, shall be reduced by amount of net proceeds of sale. Executor or administrator may be licensed or ordered to sell such real or personal estate under same regulations as provided in this chapter (on License to Sell and Convey Real and Personal Estate, chap. 135, §§ 2867-2887) for sale of real estate for payment of debts. *Ibid.*, § 2884.

Such sale shall be made in such manner as court directs, but sale of such real estate shall be at public auction, unless sold for sum sufficient to satisfy mortgage secured thereon; and executor or administrator and creditor, respectively, shall execute deeds and papers necessary for effecting conveyance. Ibid., § 2885.

Surplus of sale, after payment of debt secured, shall be administered by executor or administrator as such property would be if not held as security; and certificate of sale, filed by executor or administrator in office of clerk of town where property situated, shall operate as discharge of mortgage or lien. Ibid., § 2886

Three preceding sections shall not affect rights of widow. Ibid., § 2887

593. Mortgage Deed — Personal Property.

KNOW ALL MEN BY THESE PRESENTS, that _____, of _____, in the county of _____, and state of _____, in consideration of _____ dollars, paid to full satisfaction by _____, of _____, in the county of _____, and state of _____, by these presents do sell and convey to the said _____ and assigns forever, the following articles of personal property, viz: [*description*] warranted free from encumbrance and against any adverse claims _____. Upon condition that [*state terms of debt*].

IN WITNESS WHEREOF, _____ hereunto set _____ hand and seal this day of _____, A. D. 19 ____.

[*Signatures and seals.*]

[*Signature.*]

In presence of

STATE OF VERMONT, }
County, } ss.:

At this _____ day of _____, A. D. 19 _____, personally appeared, and acknowledged this instrument, by _____ sealed and subscribed, to be free act and deed.

Before me,

We severally swear that the foregoing mortgage is made for the purpose of securing the debt _____ specified in the conditions thereof, and for no other purpose whatever, and that the same is a just debt, _____, honestly due and owing from the mortgagor to the mortgagee.

[*Signatures.*]

STATE OF VERMONT, }
County, } ss.:

I hereby certify that the foregoing affidavit was subscribed and sworn to by _____ this _____ day of _____, A. D. 19 ____.

Before me,

ASSIGNMENT.

KNOW ALL MEN BY THESE PRESENTS, that _____, of _____, in the county of _____, and state of _____, in consideration of _____ dollars, paid to full satisfaction by _____, of _____, in the county of _____, and state of _____, do hereby assign, transfer and convey unto the said _____ and assigns

forever, all right, title, interest and estate in and unto the property conveyed by the within mortgage, and all rights and privileges under said mortgage.

IN WITNESS WHEREOF, hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

In presence of
[Signature.]

STATE OF VERMONT. }
County, } ss.:

At this day of , A. D. 19 , personally appeared, and acknowledged this instrument, by sealed and subscribed, to be free act and deed.

Before me,

DISCHARGE.

I hereby acknowledge satisfaction of the mortgage deed and the same is discharged at , this day of , A. D. 19 .

[Signatures and seals.]

In presence of
[Signature.]

594. Mortgage Deed — Personal Property.

KNOW ALL MEN BY THESE PRESENTS, that of in the county of , as security for the sum of dollars, as hereinafter set forth, do hereby sell, assign and transfer to of in the county of the following described personal property, to wit: [description]

PROVIDED, HOWEVER, that it is a condition of the foregoing sale, assignment and transfer that if the said heirs, administrators and assigns shall well and truly pay or cause to be paid to the said heirs and assigns the sum of justly due and owing from the said to the said as follows: [description of terms of debt] then this instrument to be wholly null and void, otherwise to be and remain in full force and virtue.

AND IT IS HEREBY AGREED that the property hereinbefore described is free and clear of all liens, mortgages or encumbrances, and that the sole owner thereof and ha good right to sell the same as above written, and agree that until the full payment of the debt named in the foregoing condition the said personal property shall not be removed from the state of Vermont, except by consent of the party holding this mortgage hereon indorsed, and that not pledge, sell or mortgage the same to any other party without such written consent indorsed hereon. It is also further agreed that at any time after thirty days after the debt specified in the condition above written shall become due and payable and shall not be paid as aforesaid that the said heirs or assigns may cause any or all said property to be sold at public auction by some public officer, at any public place in the town where the mortgagor reside , or where said property is situated, by posting

notices of said sale in two or more public places in said town at least ten days previous thereto, and by giving the mortgagor and all other persons interested in said sale notice thereof as required by law.

IN WITNESS WHEREOF, have hereunto set hand and seal this
day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of
[Signature.]

WE, , severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the condition thereof, and for no other purpose whatever, and that the same is a just debt, honestly due and owing from the mortgagor to the mortgagee.

[Signatures.]

STATE OF VERMONT, }
County, } ss.

AT in the county of , on this day of , A. D. 19 ,
personally appeared and made solemn oath to the truth of the above
affidavit by them severally subscribed.

BEFORE ME,

[Signature.]

ASSIGNMENT OF FOREGOING MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, that of in the county of
 and state of in consideration of dollars paid to full
satisfaction by of in the county of and state of
do hereby assign, transfer and convey unto the said and assigns forever,
all right, title, interest and estate in and unto the property conveyed by
the within mortgage, and all rights and privileges under said mortgage.

IN WITNESS WHEREOF, hereunto set hand and seal this
day of , A. D. 19 .

[Signatures and seals.]

In presence of
[Signatures.]

STATE OF VERMONT, }
County, } ss.

AT this day of , A. D. 19 , personally appeared
and acknowledged this instrument, by sealed and subscribed, to be
free act and deed.

BEFORE ME,

[Signature.]

DISCHARGE OF CHATTEL MORTGAGE.

I HEREBY ACKNOWLEDGE SATISFACTION of the mortgage deed within, and the
same is discharged at this day of , A. D. 19 .

[Signatures and seals.]

In presence of
[Signature.]

595. Conditional Sale.

THIS MEMORANDUM OF AN AGREEMENT, made this _____ day of _____, A. D. 19____, by and between _____, of _____, in the county of _____, party of the first part, and _____, of _____, in the county of _____, party of the second part, WITNESSETH:

That the said party of the first part has this day made a conditional sale to the said party of the second part of the following described property, to wit: [*description*]

THIS BILL OF SALE is given and received upon the conditions following, that is to say: If the said party of the second part, _____ heirs, executors, or administrators, shall well and truly pay, or cause to be paid to the said party of the first part, _____ heirs, executors, administrators, or assigns the sum of _____ dollars, due for this property, as follows: [*description of debt*] and shall, until said sum shall be fully paid, keep said property in a careful and prudent manner, without waste or injury, natural wear excepted, _____, then this bill of sale is to be in full force and virtue, otherwise the same is to be void; and until said sum shall be fully paid, said property is to be and remain the sole property of the said party of the first part. And the party of the first part may take possession of said property at any time on failure of payment as above stated, and in that event all payments before made to be forfeited.

_____, *Conditional Vendor.*

_____, *Conditional Vendee.*

596. Conditional Sale; East Side.

\$ _____, 19____.
FOR VALUE RECEIVED _____ hereby promise to pay _____, or order, the sum of _____ dollars, with interest annually, payable _____. This note is given for _____.

This day conditionally sold and delivered to me, by said _____, and said property is to be and remain the property of said _____ until said note is wholly paid. And _____ residence is in the town of _____.

[*Signatures.*]

VIRGINIA.

Every deed of trust or mortgage conveying goods and chattels and bill of sale or contract for sale of goods and chattels, when possession is allowed to remain with the grantor must be in writing and signed by the vendor, and is void as to subsequent purchasers for valuable consideration without notice and creditors, until and except from the time when it is duly admitted to record in the county or corporation wherein the property embraced may be. Code of 1904, § 2465.

Record must be in all counties or corporations where the goods or chattels may be. *Ibid.*, § 2466.

If any such goods or chattels shall be removed from the county or corporation in which the mortgage is recorded, the mortgage must within one year after such removal be admitted to record in the county or corporation to which the property is so removed. Otherwise so long as not recorded it shall be void as to creditors and subsequent purchasers as to property secured, except in respect to the interest of any married woman (such interest not

being her separate estate), infant or insane person, when before the end of one year after the disability shall cease, the writing is recorded in the county or corporation to which the property is removed. *Ibid.*, § 2468.

No mortgage, deed of trust or other incumbrance upon personal property, while such property is located in another state, shall be valid against property removed into this state, unless recorded in the county or corporation, in which said property is located. *Ibid.*, § 2468-a.

The provisions as to recording in county where property is relate to property within the county and without the corporate limits of a corporation having a court wherein writings may be lawfully admitted to record, and those in reference to the corporation relate only to property within the corporate limits of such corporation having said court. *Ibid.*, § 2470.

Where loan of goods or chattels is pretended to have been made to person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on part of pretended lender, or where any reservation or limitation is pretended to have been made of a use or property, by way of condition, reversion, remainder, or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation, or limitation void as to creditors of and purchasers from the person so remaining in possession, unless such loan, reservation, or limitation be declared by will, which or copy of which is, or by deed, or other writing, duly admitted to record within said five years, in county or corporation in which goods or chattels may be. *Ibid.*, § 2461.

Every sale or contract for sale of goods and chattels wherein the title thereto or a lien thereon is reserved until same be paid for in whole or in part, or transfer of title is made to depend on any condition, and possession be delivered to vendee, shall in respect to such reservation and condition, be void as to creditors of and purchasers for value without notice from such vendee until such sale or contract be in writing, signed by both vendor and vendee, in which the said reservation or condition is expressed, and until and except from time that a memorandum of said writing, setting forth date thereof, amount due thereon, when and how payable, and a brief description of goods or chattels, be docketed in clerk's office of circuit or corporation court of county or corporation in which goods or chattels may be, or in clerk's office of chancery court of city of Richmond, if goods or chattels be within corporate limits of said city; and it shall be duty of such clerk to docket and to index same from original contract in name of vendor and vendee, together with date of docketing, in a book to be kept by him for that purpose, and to endorse on such contract the words "Memorandum docketed," with his signature as clerk affixed thereto, for which service clerk may charge fee not exceeding twenty-five cents; but no tax shall be charged thereon, and the docketing and indexing of such memorandum of said contract as is herein provided for shall have same effect as to creditors of and purchasers for value without notice from vendee as if contract were recorded according to the provisions of chapter one hundred and nine of Code of Virginia of eighteen hundred and eighty-seven, or if said goods or chattels consist of locomotives, cars, or other rolling stock, equipments or personal property of any description to be used in or about the operation of any railroad, until and except from time said writing is duly admitted to record in clerk's office of circuit or corporation court of county or corporation wherein principal office in this State of company operating railroad is located, or in clerk's office of chancery court of city of Richmond, if said principal office is within corporate limits of said city, and a copy of said writing be filed in office of State corporation commission, and each locomotive, car, or other piece of rolling stock be plainly and permanently marked with name of vendor on both sides thereof, followed by word "owner."

Except where goods and chattels consist of locomotives, cars, or other rolling stock, equipments or personal property of any description to be used in

or about operation of any railroad, no acknowledgment or other form of proof shall be requisite to authorize clerk to docket said sale or contract, and all sales or contracts for sale of goods or chattels other than locomotives, cars, and railroad equipment aforesaid, heretofore docketed without acknowledgment or other proof, shall have same force and effect as if same had been duly acknowledged or proved.

All reservations, liens, conditions, and the collection of all money mentioned in any such written contract, whether recorded or not, may be enforced on petition to justice of peace when amount or value involved is within his jurisdiction, and to circuit court or corporation court when amount or value involved is within its jurisdiction. Such petition shall be filed by person entitled to recover, and shall state the contract and plaintiff's claim, describe the property with reasonable certainty, and name the time when judgment will be asked for.

A copy thereof shall be served on each person whose rights will be affected by proceedings, which may be had thereon at least ten days before date named therein for asking for judgment, and original shall be filed with the justice or clerk of court at least five days before such date.

A defendant shall, when case is in circuit or corporation court, state grounds of his defence or his counter claim or offset in an answer to the petition, to which plaintiff may reply, and no further pleading shall be required. But any such pleading may be demurred to as pleading in other cases. The court or the justice may permit all proper amendments to petition or other pleadings. The court or justice shall hear and determine all questions arising out of or under the contract which are properly raised by the pleadings (no pleadings other than petition being necessary before a justice) and shall render such judgment thereon as may be required by the rules of law or equity applicable to such questions.

The property may be sold or possession delivered or such other disposition made of it as the court or justice may direct. When judgment is for money or costs or for specific property, execution therefor may issue as in other cases. Where property is to be sold or other disposition made of it, judgment or order of court or justice shall be executed by sheriff or other officer of court authorized to execute process or by a constable. *Ibid.*, § 2462.

Each vendor in a contract for sale of personal property docketed under section twenty-four hundred and sixty-two of Code of Virginia, as amended, upon payment to him of amount of purchase price in full, as set forth in said contract, shall mark, or cause to be marked, in manner hereinafter stated, the same satisfied upon margin of page of book where same is recorded, which note of satisfaction, when signed by vendor or duly authorized agent or attorney, and attested by clerk in whose office contract docketed, shall operate as release of all claims of such vendor therein; or upon written notice by vendor, his duly authorized agent or attorney, to clerk in whose office contract is docketed, stating therein that contract has been fully paid by vendee, clerk shall, upon such notice, mark said contract satisfied upon margin of page of book wherein contract is docketed, and this shall operate as a release of all claims of such vendor, as to all goods described in contract so docketed, and clerk for attesting such release as is herein provided, or for marking said contract satisfied upon written request of vendor, his duly authorized agent or attorney, shall have fee of twenty-five cents, to be paid by vendee.

Vendor failing or neglecting to so release contract after whole amount thereof has been paid to him, and within fifteen days after such vendor shall have received written notice from vendee to mark said contract satisfied, shall forfeit five dollars to vendee.

Whenever vendee shall be indebted for rent of house wherein personal property, described in said contract, is stored or kept, and landlord or his duly authorized agent has taken action to recover said rent, said vendor, at request of landlord, or duly authorized agent or attorney, shall state under oath balance due on contract of sale, and upon payment of such balance by

vendee, shall release and mark contract satisfied in accordance with terms and provisions of this act. *Ibid.*, § 2462a.

Every deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels, and every bill of sale or contract for sale of goods and chattels when possession is allowed to remain with grantor (and any such bill of sale of contract shall be in writing and signed by vendor), shall be void as to subsequent purchasers for valuable consideration without notice, and creditors, until and except from time it is duly admitted to record in county or corporation wherein property embraced in contract, deed or bill of sale may be: but possession of estate or term, without notice of other evidence of title, shall not be notice to subsequent purchasers for valuable consideration. *Ibid.*, § 2465.

Notwithstanding such writing shall be duly admitted to record in one county or corporation wherein there is real estate or goods or chattels, it shall nevertheless be void as to such creditors and purchasers in respect to other real estate or goods or chattels without the same, until duly admitted to record in county or corporation wherein such other real estate or goods or chattels may be. *Ibid.*, § 2466.

Two preceding sections are subject to qualification that such writing admitted to record within ten days from day of its being acknowledged before and certified by a justice, notary, or other person authorized to certify same for record, shall, unless it be mortgage or deed of trust not in consideration of marriage, be as valid as to creditors and subsequent purchasers as if admission to record had been on the day of acknowledgment and certificate. *Ibid.*, § 2467.

Where two or more writings embracing same property are admitted to record in same county or corporation on same day, if previous sections do not provide for case, that which was first admitted to record shall have priority in respect to property in such county or corporation. *Ibid.*, § 2469.

Words "creditors" and "purchasers," where used in any previous section of this chapter, shall not be restricted to the protection of creditors of and purchasers from grantor, but shall extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to property conveyed, or a right to subject it to their debts. And as against any person claiming under deed or other writing which shall not have been admitted to record before payment by subsequent purchaser for valuable consideration of the whole or part of his purchase money, such subsequent purchaser, notwithstanding such deed or other writing be admitted to record before he becomes a complete purchaser, shall in equity, have a lien on the property purchased by him, for so much of his purchase money as he may have paid before notice. *Ibid.*, § 2472.

A purchaser shall not, under this chapter, be affected by record of deed or contract made by person under whom his title is not derived, nor by record of deed or contract made by any person before date of deed or contract made to or with such person, which is duly admitted to record, and from which the title of such person is derived. *Ibid.*, § 2473.

If any person other than landlord make advances either in money or supplies to any one who is engaged in or is about to engage in the cultivation of the soil, the person so making such advances shall be entitled to a lien on the crops which may be made or seeded during the year upon the land in or about the cultivation of which the advances so made have been or were intended to be expended to extent of such advances: provided an agreement in writing shall be entered into before any such advances are made, in which shall be specified the amount to be advanced or in which a limit shall be fixed beyond which the advances made from time to time during the year shall not go and the said agreement be delivered to clerk of county court in which land lies and by him docketed in a book to be kept by him for that special purpose; such agreement shall be docketed by said clerk in same manner that judgments are now required by law to be docketed and shall have same force and effect as if recorded in the deed book, and for such service said clerk shall receive a fee of twenty-five cents.

597. Crop Lien, Statutory Form.

WHEREAS, _____ is engaged in or is about to engage in the cultivation of a tract of land known as _____, and containing _____ acres, more or less, and located near _____, in the county of _____, Virginia, and is desirous of obtaining from time to time during the year advances in money or supplies to be expended for that purpose: Now, this agreement, made and entered into before any such advances are made, between the said _____, the part _____ of the first part, and _____, the part _____ of the second part, witnesseth: That the said part _____ of the second part, do hereby agree to furnish to the said _____, the part _____ of the first part, from time to time during the year beginning _____ day of _____, 19____, and ending _____ day of _____, 19____, goods, wares, merchandise, and money for the said purpose, to an amount not exceeding \$ _____. And the said _____, the part _____ of the first part, do hereby agree that the advances so made shall be expended in or about the cultivation of the said land, and that the said _____, the part _____ of the second part, shall have a lien on the crops which may be made or seeded during the said year, to the extent of the advance which may be made under or in pursuance of this agreement. And the said part _____ of the first part hereby agrees to repay all advances made hereunder, with lawful interest from the time they were respectively made until payment, and hereby waives the benefit of the homestead exemption as to this debt.

WITNESS our signatures and seals this _____ day of _____, 19____.

[SEAL.]

[SEAL.]

of _____ to wit:

I, _____ do certify that _____ whose names are signed to the foregoing writing, bearing date on the _____ day of _____, 19____, have acknowledged the same before me in my _____ aforesaid.

GIVEN under my hand this _____ day of _____, 19____.

Ibid., § 2494.

Lien provided for in section twenty-four hundred and ninety-four shall not affect in any manner rights of landlord to his proper share of rents, or his lien for rent or advances, or his right of distress or attachment for same, nor any lien existing at time of making agreement mentioned in said section, which is required by law to be recorded and shall have been admitted to record. Nor shall it affect right of party to whom advances have been made, to claim such part of his crops as is exempt from levy or distress for rent. Ibid., § 2497.

In addition to estate, not exceeding in value two thousand dollars, which every householder residing in this State shall be entitled to hold exempt, as provided in preceding sections of this chapter, he shall also be entitled to hold exempt from levy or distress the following articles, or so much or so many thereof as he may have, to be selected by him or his agents, except that the live stock so exempted under this and the following sections of this chapter shall not be exempt from levy or distress made under provisions of chapter ninety-three of this Code:

First. The family Bible.

Second. Family pictures, school books, and library for use of family, not exceeding in all one hundred dollars in value.

Third. A seat or pew in any house or place of public worship.

Fourth. A lot in a burial ground.

Fifth. All necessary wearing apparel of debtor and his family; all beds, bedsteads, and bedding necessary for use of such family; and all stoves and appendages put up and kept for necessary use of family, not exceeding three.

Sixth. One cow and her calf till one year old, one horse, six chairs, six plates, one table, six knives, six forks, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces of wooden or earthenware, one loom and its appurtenances, one safe or press, one spinning wheel, one pair of cards, one axe, two hoes; ten barrels of corn, or, in lieu thereof, twenty-five bushels of rye or buckwheat; five bushels of wheat, or one barrel of flour; twenty bushels of potatoes, two hundred pounds of bacon or pork, three hogs, fowls not exceeding in value ten dollars, ten dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, one sewing machine, and in case of mechanic, the tools and utensils of his trade, not exceeding one hundred dollars in value, and in case of an oysterman or fisherman, his boat and tackle, not exceeding two hundred dollars in value; if the boat and tackle exceed two hundred dollars in value same shall be sold, and out of proceeds the oysterman or fisherman shall first receive two hundred dollars in lieu of such boat and tackle. *Ibid.*, § 3650.

Any deed of trust, mortgage, or other writing, or pledge made by a householder to give a lien on property exempt from distress or levy under section thirty-six hundred and fifty, shall be void as to such property. *Ibid.*, § 3655.

The word "householder" used in this chapter shall be equivalent to the expression "householder or head of a family," and the term "laboring man" shall be construed to include all householders who receive wages for their services. *Ibid.*, § 3657.

If any person obtain from another an advance of money, merchandise, or other thing, upon a promise, in writing, that he will send or deliver to such other person, his crop, or other property, and fraudulently fail or refuse to perform such promise, he shall be deemed guilty of the larceny of such money, merchandise or other thing. *Ibid.*, § 3719.

Whenever any person is in possession of any personal property, in any capacity, the title or ownership of which he has agreed in writing shall be or remain in another, and such person so in possession shall fraudulently sell, pledge, pawn, remove from the premises where it has been agreed that the property shall remain, and refuse to disclose the location thereof, or otherwise dispose of the property without written consent of owner or person in whom title is, or if such writing be a deed of trust, without written consent of trustee or beneficiary in such deed of trust, he shall be deemed guilty of the larceny thereof. This act shall not be construed to interfere with rights of any innocent third party purchasing said property, unless such writing shall be docketed or recorded as required by law. *Ibid.*, § 3719a.

No deed of trust or mortgage upon goods or chattels shall prevent same from being distrained and sold for taxes or levies against grantor in such deed while goods and chattels remain in grantor's possession; nor shall any such deed prevent goods and chattels conveyed from being distrained and sold for taxes or levies assessed thereon, no matter in whose possession they may be found. *Ibid.*, § 626.

If sale be made under deed of trust or mortgage, executed by public service corporation, on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to purchaser at sale not only works and property of company as they were at time of making deed of trust or mortgage, but any works which company may, after that time and before sale, have constructed, and all other property of which it may be possessed at time of sale other than debts due to it. Upon such conveyance to purchaser, said company shall ipso facto be dissolved, and purchaser shall become a corporation by any name which may be set forth in the said conveyance, upon complying with the provisions of section thirty-

six, chapter five, of the act entitled "an act concerning corporations," which became a law May twenty-first, nineteen hundred and three. Ibid., § 1294b, subd. (12).

598. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____ of _____, and state of _____, in consideration of the sum of _____ dollars, to _____ paid by _____, of the _____ of _____, and state of _____, the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm, unto the said _____, and to _____ heirs and assigns, the following goods and chattels, to wit: [description]

TO HAVE AND TO HOLD, ALL AND SINGULAR, the said goods and chattels, unto the said mortgagee _____ herein, and _____ heirs, executors, administrators and assigns, to _____ and _____ sole use, forever. And the mortgagor herein, for _____ and for _____ heirs, executors and administrators, do hereby covenant to and with the said mortgagee _____, _____ heirs, executors, administrators and assigns, that said mortgagor _____ lawfully possessed of the said goods and chattels, as of _____ own property; that the same are free from all encumbrances, and that _____ will, and _____ executors and administrators shall warrant and defend the same to _____, the said mortgagee _____, _____ heirs, executors, administrators and assigns, against the lawful claims and demands of all persons, whatsoever.

PROVIDED, NEVERTHELESS, that if the said mortgagor _____, _____ executors or administrators, shall well and truly pay unto said mortgagee _____, _____ executors, administrators or assigns _____, then this mortgage is to be void, otherwise to remain in full force and effect.

AND, PROVIDED, ALSO, that it shall be lawful for the said mortgagor _____, _____ executors, administrators and assigns, to retain possession of the said goods and chattels, and at _____ own expense, to keep and use the same, until _____ or _____ executors, administrators or assigns, shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor hereby covenant and agree that in case default shall be made in the payment of the note aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable; or if the mortgagee _____, _____ executors, administrators or assigns, shall feel _____ insecure or unsafe, or shall fear diminution, removal or waste of said property; or if the mortgagor _____ shall sell or assign or attempt to sell or assign the said goods and chattels, or any interest therein; or if any writ, or any distress warrant shall be levied on said goods and chattels, or any part thereof; then, and in any or either of the aforesaid cases, all of said note and sum of money, both principal and interest, shall at the option of the said mortgagee _____, _____ executors, administrators or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee _____, _____ executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate possession of said property, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the mortgagor _____, with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take pos-

session of, and remove, and sell, and dispose of the said property, or any part thereof, at public auction, to the highest bidder, after giving days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit as the said mortgagee, heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect; and out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note, rendering the surplus, if any remain, unto said mortgagor, or legal representatives.

WITNESS, the hand and seal of the said mortgagor, this day of , in the year of our Lord one thousand nine hundred and .
[Signatures and seals.]

Sealed and delivered in the presence of

[Signature.]

STATE OF VIRGINIA, }
of , } ss.

, of said , being duly sworn, deposes and says: That , the lawful owner of the goods and chattels described in the within chattel mortgage of which this is a part; and that said goods and chattels are free and clear of all liens or encumbrances, except the said mortgage. And that there are no judgments or executions against , the said , that affect the title of said goods and chattels named in said mortgage .

By and under the foregoing representation ha obtained a loan of (\$) dollars, which said chattel mortgage is given to secure the payment thereof and interest.

[Signatures and seals.]

Subscribed and sworn to before me,
this day of , 19 .
[Signature.]

WASHINGTON.

Mortgages may be made upon all kinds of personal property, and upon the rolling stock of railroad company and upon all kinds of machinery, and upon boats and vessels, and upon portable mills, and such like property, and upon growing crops and crops before seed thereof sown or planted; but mortgaging of crops before seed thereof sown or planted, for more than one year in advance, is forbidden, and all securities or mortgages executed on such unsown or unplanted crops are void, unless such crops are to be sown or planted within one year from time of execution of mortgage. Remington & Ballinger's Annotated Codes and Statutes of 1909, § 3659.

Mortgage of personal property is void against creditors of mortgagor or subsequent purchaser, and encumbrancers of property for value and in good faith, unless accompanied by affidavit of mortgagor that it is made in good faith, and without design to hinder, delay or defraud creditors, and acknowledged and recorded in manner required in conveyance of real property. *Ibid.*, § 3660 [See §§ 3662 and 3665, later enactments].

Such instrument within ten days from time of execution thereof shall be filed in office of county auditor of county where mortgaged property situated,

and he shall file all such instruments when presented for purpose, upon payment of the proper fees therefor, indorse thereon time of reception, and number thereof, and enter in suitable book to be provided by him, with alphabetical index thereto, used exclusively for that purpose, ruled into separate columns with appropriate heads: "The time of filing," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," and "Date of release." An index to said book shall be kept in manner required for indexing deeds of real estate, and county auditor shall receive for services required by this act sum of fifteen cents for every instrument. *Ibid.*, § 3661.

Mortgage filed and indexed in pursuance of this act (this act refers to §§ 3659 and 3661-3667) is full and sufficient notice to all the world, of existence and conditions thereof, but ceases to be notice against creditors of mortgagor and subsequent purchasers and mortgagees in good faith after expiration of time mortgage becomes due, unless before expiration of two years after time mortgage becomes due, mortgagee, his agent or attorney, shall make and file as aforesaid an affidavit, setting forth amount due upon mortgage, which affidavit shall be annexed to instrument to which it relates and auditor shall indorse on affidavit time it was filed. *Ibid.*, § 3662.

Effect of such affidavit shall not continue beyond one year from time when mortgage would otherwise cease to be valid against such creditors and subsequent purchasers and mortgagees in good faith; unless before time when mortgage would otherwise cease to be valid, as aforesaid, similar affidavit filed and annexed as provided in preceding section, and with like effect. *Ibid.*, § 3663.

Mortgage contemplated by this act given to secure sum of one hundred dollars or less, exclusive of interest and costs of foreclosure, may be made in substantially following form:

599. Chattel Mortgage, Statutory Form.

This mortgage, made this day of , in the year , by A. B., of , mortgagor, to C. D., of , mortgagee.

Witnesseth: That the mortgagor mortgages to the mortgagee [*here describe the property*] as security for the payment to him of dollars, on [*or, before*] the day of , in the year , with interest thereon [*or, security for the payment of a note or obligation, describing it, etc.*].

A. B.

Signed and delivered in the presence of

E. F.

G. H.

Ibid., § 3664.

Mortgage to secure sum of three hundred dollars or more exclusive of interest, costs and attorney's or counsel fees may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or copy must also be filed and indexed as required by this act. *Ibid.*, § 3665.

In case property mortgaged exists in two or more counties, copy of mortgage may be filed in each of such counties with like force and effect as original mortgage. *Ibid.*, § 3666.

Whenever mortgage, filed under provisions of this act, has been paid or conditions thereof satisfied, mortgagee, or assignee or personal representatives shall make to mortgagor, assignee or personal representatives, certificate in writing, under his hand, stating date of mortgage and description of property thereby mortgaged, and that same has been discharged in full;

and on delivering certificate in writing to officer with whom mortgage filed, said officer shall deliver mortgage to person producing certificate on payment of sum of ten cents for filing certificate, and file certificate in his office, indorsing thereon true date of filing same, and keep certificate among records in office, and write word "satisfied" with date opposite to mortgage, in index in which such mortgages entered, under heading "release." *Ibid.*, § 3667.

Mortgage of personal property must be recorded in office of county auditor of county where property situated, in book kept exclusively for that purpose. When personal property mortgaged is thereafter removed from county where situated, it is, except as between parties to mortgage, exempted from operation thereof, unless either,—

1. Mortgagee within thirty days after removal causes mortgage to be recorded in county to which property removed; or

2. Mortgage be recorded in custom house; or

3. Mortgagee within thirty days after removal takes possession of property; but mortgage on vessel or boat, or part of vessel or boat, over twenty tons burden, shall be recorded in office of collector of customs, where vessel is registered, enrolled or licensed, and need not be recorded elsewhere. *Ibid.*, § 3668 [See § 3661, later enactment].

Mortgagor of personal property, or successor in interest of mortgagor, who, with intent to hinder, delay or defraud mortgagee, or assigns or legal representatives, shall injure or destroy property or part thereof, or conceal property or part thereof, or remove same or part thereof from county where situated at date of mortgage before duly released, without consent in writing of mortgagee, or sell or dispose of same, or any interest therein, where he parts with possession thereof, without consent in writing of mortgagee, is guilty of misdemeanor. *Ibid.*, § 3669.

Person selling or mortgaging personal property which is at the time mortgaged or upon which any lien has been or may lawfully be filed, without informing purchaser or mortgagee thereof, before payment of purchase price or money loaned, of several amounts of all such mortgages and liens, is guilty of larceny. *Ibid.*, § 2603.

Person in possession who shall remove, conceal or destroy or connive at or consent to removal, concealment or destruction of personal property or part thereof, upon which mortgage lien, conditional sales contract or lease exists, in such manner as to hinder, delay or defraud holder of mortgage lien or conditional sales contract, or lessor, or who, with intent to hinder, delay or defraud such holder or lessor, shall sell, remove, conceal or destroy or connive at or consent to removal, concealment or destruction of such property, is guilty of gross misdemeanor. *Ibid.*, § 2629.

Mortgage upon property of mixed character, consisting in part of real estate and in part of personal property, and particularly upon railroad property, in state of Washington, shall be admitted to record and be recorded in the several counties wherein property is located as a real estate mortgage when acknowledged in manner provided by law, and original of mortgage or copy certified by auditor of any county where original has been recorded may be filed in a file to be kept for that purpose in office of auditor of county where property situated, and said record and filing shall constitute notice to all persons of existence of mortgage lien provided by mortgage. *Ibid.*, § 8782.

In case mortgage covering mixed real estate and personal property is recorded in record of mortgages of real estate, or in record of chattel mortgages, and affidavit required by law to be attached to chattel mortgages is not recorded as part of chattel mortgage but is afterwards recorded upon separate page of record and a reference made at place of original record of real estate or chattel mortgage to said affidavit stating volume and pages on which same may be found, said record shall constitute notice from and after date of filing of affidavit, the same as if affidavit and mortgage had been recorded together at same time and at same places. *Ibid.*, § 8783.

County auditor must, upon the payment of his fees for same, record separately all such papers or writings as are required by law to be recorded and such as are required by law to be filed if requested so to do by party filing same. *Ibid.*, § 8786.

When amount due on mortgage is paid, mortgagee, legal representatives or assigns, shall, at request of person interested in property mortgaged, acknowledge satisfaction of same on margin of page upon which mortgage recorded (which marginal satisfaction shall be at the time attested by auditor or deputy), or by executing instrument in writing referring to mortgage by volume and page of record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be acknowledged and upon request be recorded in county where property situated. *Ibid.*, § 8798.

If mortgagee fail so to do after sixty days from date of such request or demand, he shall forfeit to mortgagor sum of twenty-five dollars, to be recovered in any court having competent jurisdiction, and said court, when convinced that mortgage fully satisfied, shall issue order in writing, directing auditor to cancel mortgage, and auditor shall immediately record order and cancel mortgage as directed by court, upon margin of page upon which mortgage recorded, making reference thereupon to order of court and to page where order recorded. *Ibid.*, § 8799.

Person to whom real estate or chattel mortgage given, or assignee of mortgage, may, by instrument in writing, by him signed and acknowledged in manner provided by law entitling mortgages to be recorded, assign same to person therein named as assignee, and person to whom mortgage is so assigned, may, after assignment has been released in office of auditor of county where mortgage is of record, acknowledge satisfaction of mortgage, and discharge same of record. *Ibid.*, § 8800.

Conditional sales of personal property or leases thereof, containing conditional right to purchase, where property is placed in possession of vendee, shall be absolute as to purchasers, encumbrancers and subsequent creditors in good faith, unless within ten days after taking possession by vendee, memorandum of sale, stating terms and conditions and signed by vendor and vendee, shall be filed in auditor's office of county, wherein, at date of vendee's taking possession of property, vendee resides. *Ibid.*, § 3670.

It is duty of county auditor wherein such memorandum is presented to him for that purpose, to file all such instruments, upon payment of proper fees, indorse thereon time of reception, number thereof, and he shall enter in suitable book to be provided by him, with alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "The time of filing," "Name of vendor," "Name of vendee," "Date of instrument," "Amount of purchase price," and "Date of release." An index of said book shall be kept in manner required for indexing deeds to real estate, and county auditor shall receive for services required by this chapter, twenty-five cents for each instrument. Such instrument shall remain on file until full payment made thereon, and shall be satisfied or canceled in same manner and upon payment of same fees as chattel mortgages. *Ibid.*, § 3671.

Purchaser or lessee of personal property obtaining possession under contract providing that title shall not vest in purchaser until purchase price paid, who, with intent to hinder, delay or defraud vendor or assigns or legal representatives, shall injure or destroy property or part thereof or conceal property or part thereof, or remove same or part thereof from county where situated at time possession passed to purchaser or lessee before duly released, without consent in writing of vendor, or sell or dispose of same or any interest therein where he parts with possession, without consent in writing of vendor, is guilty of misdemeanor. *Ibid.*, § 3672.

All acts or parts of acts enumerated in the following schedule, and all acts, and parts of acts in conflict with the provisions hereof, are hereby repealed.

Schedule of Acts Repealed contains section 3672, which is retained, as apparently not in conflict with other provisions or not clearly embraced in title of act. *Ibid.*, § 2304, and note.

No bill of sale for transfer of personal property is valid against existing creditors or innocent purchasers, where property left in possession of vendor, unless bill of sale recorded in auditor's office of county where property situated, within ten days after sale made. *Ibid.*, § 5291.

In contract of or for sale of railroad equipment or rolling stocks, it may be agreed that title of property sold, or contracted to be sold, although deliverable immediately, or subsequently, shall not vest in purchaser until purchase price paid, or that seller shall have lien for unpaid purchase money; and in contract of or for leasing of such property, it may be stipulated that there be conditional sale at termination of lease, and rentals received may, as paid, be treated as purchase money, and title shall not vest in lessee or vendee until purchase price paid, notwithstanding delivery and possession; but no such contract is valid against subsequent judgment creditor or subsequent bona fide purchaser, for value and without notice, unless evidenced by instrument acknowledged like a deed and filed for record in office of county auditor of county where, at time of execution thereof, is situated principal office of vendee or lessee within this territory, and unless each locomotive engine or car so sold or contracted to be sold, or leased, as aforesaid, shall have name of vendor or lessee plainly marked on each side, followed by word "owner" or "lessor," as case may be. *Ibid.*, § 8741.

Such contracts shall be recorded by said county recorder in book of records of mortgages of real estate in said county; and on payment of purchase money and performance of terms and conditions stipulated in contract, declaration in writing to that effect shall be made by vendor or assignee, on margin of record of contract, attested by said recorder, or by separate instrument, acknowledged and recorded as aforesaid. *Ibid.*, § 8742.

Mortgage of personal property, when debt secured by mortgage is due, may be foreclosed by notice and sale as herein provided; or by action in superior court having jurisdiction in county where property situated. *Ibid.*, § 1104.

Notice must contain full description of property, with time and place of sale, also statement of amount due, and must be signed by mortgagee or his attorney. *Ibid.*, § 1105.

Such notice shall be placed in hands of sheriff or other proper officer, and personally served in manner provided by law for service of summons; but, if mortgagor cannot be found in county where mortgage is being foreclosed, it shall [not] be necessary to advertise notice or affidavit in newspaper; but general publication directed in next section shall be sufficient service upon all parties interested, and such notice shall be sufficient authority for officer to take property into immediate possession. *Ibid.*, § 1106.

After notice served upon mortgagor, it must be published in same manner and for same length of time as required in cases of sale of like property on execution, and sale shall be conducted in same manner. *Ibid.*, § 1107.

Purchaser shall take all interest which mortgagor had in property mortgaged. *Ibid.*, § 1108.

Officer conducting sale shall execute to purchaser bill of sale of property, which bill of sale shall be effectual to carry whole title and interest purchased, and if any balance of purchase price remain, it shall be disposed of in same manner as surplus proceeds of sales on execution. *Ibid.*, § 1109.

Right of mortgagee to foreclose, as well as amount claimed to be due, may be contested by any person interested in so doing, and proceedings may be transferred to superior court, for which purpose an injunction may issue if necessary. *Ibid.*, § 1110.

Where debt not due for which mortgage given, and mortgagee has reasonable cause to believe mortgaged property will be destroyed, lost or removed, he shall have the right to an immediate action in superior court of county having jurisdiction where property situated, for recovery of debt, and court

may make any order it may deem fit, in order to secure said property so as to make same available for satisfaction of debt. *Ibid.*, § 1111.

Mortgage[e] of personal property, where debt secured by the mortgage is due, or, if debt not yet due, and mortgagee has reasonable ground to believe debt is insecure and that by allowing property longer to remain in hands of mortgagor he would be in danger of losing debt or security, may have property taken from possession of mortgagor, and sold in manner provided in this chapter (on the Foreclosure of Chattel Mortgages, chap. I, of Title VIII, §§ 1104-1115). *Ibid.*, § 1112.

Provisions contained in chapter two (on Foreclosure of Mortgages of Real Estate, §§ 1116-1128) of this title, so far as the same shall be applicable, shall govern in actions for foreclosure of chattel mortgages or bills of sale creating liens on personal property. *Ibid.*, § 1113.

Mortgagee or holder of lien may proceed upon mortgage or lien, [or] if there be separate obligation in writing to pay the same secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on mortgage, if there be specific agreement therein for payment of certain sum or there is separate obligation for said sum, in addition to decree of sale of mortgaged property, judgment shall be rendered for amount due upon mortgage or other instrument, the payment of which is thereby secured. The decree shall direct sale of mortgaged property, and if proceeds of sale be insufficient under execution, sheriff may levy upon and sell other property of mortgage debtor, not exempt from execution, for sum remaining unsatisfied. *Ibid.*, § 1114.

Interest of mortgagor, subject, however, to lien of mortgagee, may be sold under process of law issuing out of any superior or justice of the peace court; but, if party who has mortgage resides in state, or has agent herein, and same is known to officer executing process, he shall serve upon him or agent personally, or by mailing to him or agent if their post-office is known, a notification of intended sale at time such mortgaged property is seized under said process, or within five days thereafter. Said property shall not be sold within less than thirty days after seizure, and officer executing process must post in three public places, near place where property is to be sold, notice of time and place of sale, at time he seizes said property under said process. *Ibid.*, § 1115.

All franchises of every kind and nature shall be subject to sale upon execution and upon order of sale issued upon foreclosure of mortgage, in same manner as any other personal property, except as hereinafter provided. *Ibid.*, § 520.

The levy of such execution or order of sale shall be made by filing in office of auditor of county where franchise granted, copy of same, with notice in writing that under such execution or order of sale officer levying same has levied upon franchise to be sold, specifying time and place of sale, name of owner of franchise, amount of claim or judgment for satisfaction of which franchise is to be sold, and name of plaintiff in action in which decree of foreclosure or judgment is entered; and by serving copy of execution or order of sale and notice upon judgment debtor or attorney of record, if any, in action in which judgment was rendered, twenty days prior to date of sale. Notice may be served upon a defendant in same manner that summons is served in civil actions. Sale of franchise under execution or order of sale upon foreclosure must be made at front door of courthouse in county in which franchise granted, not less than twenty days after levy of execution or order of sale and giving of notice as in this act provided. *Ibid.*, § 521.

600. Chattel Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, of _____ county, state of _____, hereinafter called the mortgagor _____, in consideration of _____ dollars, paid by _____, hereinafter called the mortgagee _____, the receipt whereof is hereby acknowledged, do hereby bargain, sell and convey unto the said

mortgagee the following described personal property in the possession of _____, in _____ county, state of Washington, to wit: [description]

TO HAVE AND TO HOLD, said personal property to the said mortgagee, heirs and assigns forever, and said mortgagor for _____ and _____ heirs, executors and administrators, covenant that _____ the lawful owner of said personal property, that _____ ha good right to sell and dispose of the same, and that it is free and clear of all encumbrances

PROVIDED, NEVERTHELESS, if the mortgagor _____, or _____ heirs and assigns, shall pay or cause to be paid unto the mortgagee _____, _____ heirs or assigns, the sum of _____ dollars, with interest thereon at the rate of _____ per cent. per annum, principal and interest payable according to the terms of _____ certain promissory note (or any renewal note or notes which may be taken in lieu of the above note _____, or any of them, to evidence the payment of said sum of money or any part thereof) for the respective amounts and dated and due at the respective times following:

\$ _____ . Dated _____ day of _____, 19 . Due _____ day of _____, 19 .
 \$ _____ . Dated _____ day of _____, 19 . Due _____ day of _____, 19 .

and shall keep and perform all the promises and agreements herein contained, then this mortgage shall be void, and a discharge thereof shall be given by said mortgagee _____, _____ heirs or assigns at the request of and at the expense of said mortgagor _____, otherwise to remain in full force and effect.

But if default be made in the payment of the debt hereby secured or any part thereof when the same shall become due, or if any of said property be removed or an attempt be made to remove any part thereof from said county by any one, or if said property or any part thereof be attached, levied upon or claimed by any creditor or creditors of said mortgagor _____, or if said mortgagor shall dispose of or attempt to dispose of the same without the written consent of said mortgagee _____, or _____ heirs or assigns, or if said mortgagor shall fail or neglect to take proper care of any of said property, or if the holder of said note shall from any cause deem _____ insecure, then the whole amount of this mortgage shall at once become due and payable notwithstanding any provision herein to the contrary, and it shall be lawful and the said mortgagor hereby authorize said mortgagee or _____ agent to take possession of all of the property mentioned herein wheresoever found and foreclose this mortgage and sell said property pursuant to law, and out of the proceeds of such sale to retain the principal and interest remaining unpaid on said note _____, and all costs of such foreclosure and sale, together with the sum of _____ dollars as attorney's fees in addition to the other fees provided for herein which the mortgagor agree to pay in case any suit or proceedings be had to collect the debt hereby secured or any part thereof, and said attorney's fee is secured by this mortgage and is to be paid by said mortgagor _____ if suit be settled before judgment, and the excess money, if any there be over and above the sum secured hereby after foreclosure sale, shall on demand be paid to the said mortgagor _____, _____ heirs or assigns.

IN WITNESS WHEREOF, _____ ha hereunto set _____ hand and seal _____, this day of _____, A. D. 19 _____.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

predecessor, or of fraud rendering void the title of such grantor. *Ibid.*, § 3099.

In this section word "transfer" shall be taken to include every gift, sale, conveyance and assignment, and word "charge" shall be taken to include every confessed judgment, deed of trust, mortgage, lien and incumbrance. Every transfer or charge which is not upon consideration deemed valuable in law, shall be void as to creditors whose debts shall have been contracted at time it was made; but shall not upon that account merely be void as to creditors whose debts shall have been contracted, or as to purchasers who shall have purchased after it was made; and though decreed void as to prior creditor, because voluntary, it shall not for that cause be decreed void as to subsequent creditors or purchasers. Every transfer or charge made by insolvent debtor attempting to prefer creditor of such insolvent debtor or to secure such creditor or any surety or indorser for debt to exclusion or prejudice of any other creditor, is void as to such preference or security, but shall be taken to be for benefit of all creditors of such debtor, and all the property so attempted to be transferred or charged shall be applied and paid pro rata upon all debts owed by debtor at time transfer or charge made; but such transfer or charge shall be valid as to such preference or priority, unless creditor of such insolvent debtor institute suit in chancery within one year after transfer or charge was made to set aside and avoid same and cause property so transferred or charged to be applied toward payment pro rata of all debts of insolvent debtor existing at time transfer or charge made, subject, however, to provision hereinafter contained with reference to creditors uniting in suit and contributing to expenses thereof. But if such transfer or charge be admitted to record within eight months after it is made, then such suit to be availing must be brought within four months after transfer or charge was admitted to record. Every such suit shall be deemed to be brought in behalf of plaintiff and all other creditors of such insolvent debtor, but the creditor instituting such suit or proceeding together with all creditors of such insolvent debtor, who shall come into suit and unite with plaintiff before final decree and agree to contribute to costs and expenses of suit, shall be entitled to have their claims first paid in full pro rata out of property so transferred or charged, in preference to any creditor of such debtor who shall before final decree decline or fail to so unite and agree to contribute to costs and expenses of suit, but not in preference to such creditor as may attempt to sustain preference given him by transfer or charge. Nothing in this section shall prevent making of preference as security for payment of purchase money or bona fide loan of money or other bona fide debt contracted at time transfer or charge made or as security for one who at time of transfer or charge becomes indorser or surety for payment of money then borrowed. Nothing in this section shall affect any transfer of bonds, notes, stocks, securities, or other evidences of debt in payment of or as collateral security for payment of bona fide debt or to secure any indorser or surety whether transfer made at time debt contracted or indorsement made or for the payment or security of pre-existing debt. *Ibid.*, § 3100.

Where loan of goods or chattels is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on part of pretended lender, or where any reservation or limitation is pretended to have been made of a use or property, by way of condition, reversion, remainder, or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation or limitation, void as to creditors of, and purchasers from, person so remaining in possession, unless declared by will, deed or other writing, duly acknowledged. And, if any sale be made of goods and chattels, reserving title until same paid for, or otherwise, and possession be delivered to buyer, such reservation shall be void as to creditors of, and purchasers without notice from, such buyer,

unless notice of reservation recorded in office of clerk of county court of county where property is, or in case goods and chattels consist of engines, cars or other rolling stock or equipment to be used in or about operation of any railroad, unless notice be recorded in office of secretary of state, who in such case shall record same in book to be kept for the purpose, and be entitled to fee of five dollars for so doing. *Ibid.*, § 3101.

Every deed of gift, or deed of trust or mortgage, conveying real estate or goods and chattels, shall be void as to creditors and subsequent purchasers for valuable consideration without notice, until and except from time that it is duly admitted to record in county wherein property embraced in deed may be. *Ibid.*, § 3103.

Notwithstanding such writing admitted to record in one county wherein are real estate, or goods or chattels, it shall nevertheless be void as to such creditors and purchasers in respect to other real estate or goods or chattels without the same, until duly admitted to record in county wherein such other real estate, or goods or chattels, may be. *Ibid.*, § 3104.

If goods or chattels mentioned in such writing, be removed from county in which it is admitted to record, said writing shall, within three months after removal, be admitted to record in county to which property is so removed; otherwise same, for so long as it is not admitted to record in last mentioned county, shall, as to property so removed, be void as to such creditors or purchasers. But such writing shall not be so void in respect to interests of married woman, infant or insane person, if before end of three months after disability shall cease, writing be recorded in county to which property removed. *Ibid.*, § 3105.

Where two or more writings embracing same property are admitted to record in same county on same day, if previous sections do not provide for the case, that which was first admitted to record shall have priority in respect to property in such county. *Ibid.*, § 3106.

Words "creditors" and "purchasers" where used in any previous section of this chapter (of Acts valid between the Parties, but void as to Creditors and Purchasers, chap. 74, §§ 3099-3108), shall not be restricted to protection of creditors of, and purchasers from, the grantor, but shall extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to the property conveyed, or a right to subject it to their debts. *Ibid.*, § 3107.

Purchaser shall not, under this chapter, be affected by record of a deed or contract made by person under whom his title is not derived, nor by record of a deed or contract made by any person before the date of a deed or contract made to or with such person, which is duly admitted to record, and from which the title of such person is derived. *Ibid.*, § 3108.

WISCONSIN.

Every sale made by vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless accompanied by immediate delivery and followed by continued change of possession of things sold or assigned, shall be presumed to be fraudulent and void against creditors of vendor or creditors of person making assignment or subsequent purchasers in good faith; and shall be conclusive evidence of fraud unless it be made to appear on part of persons claiming under such sale or assignment that same made in good faith and without intent to defraud such creditors or purchasers. Statutes of 1898, § 2310.

Term "creditors," as used in last section, includes all persons who shall be creditors of vendor or assignor at any time while goods and chattels shall remain in his possession or under his control. *Ibid.*, § 2311.

Nothing in two last sections applies to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea or in foreign ports, or without state; but assignee or mortgagee shall take possession of ship, vessels or goods as soon as may be after arrival thereof within state. *Ibid.*, § 2312.

No mortgage of personal property is valid against any other person than parties thereto unless possession delivered to and retained by mortgagee or unless mortgage or copy is filed as provided in next section, except when otherwise directed in these statutes. Nor shall chattel mortgage of personal property which is by law exempt from seizure and sale upon execution be valid unless signed by wife of person making mortgage, if he be a married man and his wife at time be member of his family, and unless signature of such wife be witnessed by two witnesses. *Ibid.*, § 2313.

Mortgage of personal property or copy may be filed in office of clerk of town, city or village where mortgagor resides, or in case he is non-resident of state then in office of clerk of town, city or village where property may be at time of execution of mortgage; such clerk shall indorse on mortgage or copy time of receiving same and keep same in his office for inspection of all persons; such clerk shall also make the entries as required in subdivision 10 in section 832. Mortgages so filed shall be as valid and binding upon all persons as if property mortgaged had been, immediately upon execution of mortgage, delivered to, and possession thereof retained by, mortgagee. *Ibid.*, § 2314.

Such mortgage shall cease to be valid, against creditors of person making same or subsequent purchasers or mortgagees in good faith, after expiration of two years from filing of same or copy unless within thirty days next preceding expiration of two years mortgagee, agent or attorney shall make and annex to instrument or copy on file an affidavit setting forth interest which mortgagee has by virtue of such mortgage in property therein mentioned, upon which affidavit the clerk shall indorse time when same was filed. *Ibid.*, § 2315.

Effect of such affidavit shall not continue beyond two years from time when mortgage would otherwise cease to be valid against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding time when mortgage would otherwise cease to be valid as aforesaid a similar affidavit may be filed and annexed as provided in preceding section and with like effect. *Ibid.*, § 2316.

No sale of personal property taken by virtue of chattel mortgage, lease or other instrument intended as security, except by consent of mortgagor, legal representatives or assigns, shall be made before expiration of five days from time when same actually taken, nor shall property during such time be removed from county where situated when taken; and during such period property shall be subject to redemption by payment of mortgage debt and actual and necessary costs and expenses of taking and keeping it incurred at time of making redemption. Person aggrieved by violation of any provision of this section may recover of person who violated same, in addition to his actual damages, twenty-five dollars as liquidated damages. If any such property is sold at private sale, without public notice, or is sold within period herein limited, without such consent, mortgage debt shall be deemed paid and mortgage securing same be deemed canceled. Nothing in this section shall be construed to limit effect of section 2319b. *Ibid.*, § 2316a.

Mortgagor of stock of goods or stock in trade of which he is in possession and from which he is permitted to make sales and apply proceeds upon indebtedness existing between him and mortgagee shall file statement in writing of aggregate amount of sales made therefrom, amount applied on

mortgage debt and total valuation of stock added, every sixty days from date of mortgage with town, city or village clerk in whose office mortgage filed. Mortgage shall cover and be valid lien upon property added to such stock after its execution for amount of indebtedness remaining unpaid thereon. Such statement shall be verified by mortgagor, agent or attorney as being true and correct statement of all sales made from stock of mortgaged goods, value of additions made to original stock since date of mortgage or date of last verified statement so filed and amount paid on mortgage debt since execution of mortgage or filing of such statement. If mortgagor shall fail to file statement herein required within time prescribed the mortgage, as between the parties thereto, shall be immediately due and payable, and at expiration of fifteen days from time fixed for filing of such statement shall cease to be lien upon such stock of goods, or stock in trade except as between mortgagor and mortgagee. *Ibid.*, § 2316b.

Whenever property covered by chattel mortgage, or instrument intended to have effect of chattel mortgage, shall be taken and sold under and by virtue of such mortgage pursuant to power of sale contained therein, owner of mortgage, or person acting as agent of owner and conducting sale, shall, within ten days after sale of any property covered by mortgage, make and file affidavit setting forth date of sale, description of property sold, sum then claimed to be due on indebtedness secured by mortgage, amount realized on sale, statement in detail of expenses of sale including cost of taking and keeping property pending sale. Copy of notice of sale if any shall be attached to affidavit and be deemed part thereof. Such affidavit shall be filed in office of town, city or village clerk where mortgage under which sale is had was filed, or, if mortgage not so filed, then in office of clerk of town, city or village where sale held.

Person violating the provisions of this act shall be liable to person personally liable for indebtedness, in which case such person shall be entitled to recover in addition to his actual damages, sum of twenty-five dollars liquidated damages. In case of failure of owner of mortgage, or his agent conducting sale, to comply with the provisions of this act within time herein limited, debt secured by such mortgage shall be deemed fully satisfied and mortgage cancelled. Statutes Supplement 1899-1906, p. 1091, § 2316c [chap. 122, Laws of 1903].

No contract for sale of personal property, by whose terms title is to remain in vendor and possession thereof in vendee until purchase price paid or other conditions of sale complied with is valid against any other person than parties thereto and those having notice thereof unless contract is in writing, subscribed by parties, and same or copy is filed in office of clerk of town, city or village where vendee resides, or, if he shall not be resident of state, then in office of clerk of town, city or village where property may be at time of making contract, and such clerk shall file, keep and index same in like manner as mortgages of personal property and receive like compensation therefor; but effect of such filing shall not extend for more than one year after time fixed for payment of contract price or for performance of other conditions of sale. Statutes of 1898, § 2317.

When chattel mortgage paid and other conditions fully performed, mortgagee, representative or assignee shall, on demand, give mortgagor certificate to that effect; and mortgagor shall, within ten days after receiving certificate, cause same to be filed in office where mortgage to which certificate relates was filed, and remove mortgage from office. Town, village and city clerks shall receive and file certificate and may charge ten cents for so doing. *Ibid.*, § 2317a.

Copy of mortgage or other instrument or of copy, so filed, including affidavits annexed thereto in pursuance of this chapter [of fraudulent Con-

eyances and Contracts relating to Personalty, chap. 105, §§ 2306-2319b], certified by clerk in whose office same is filed, shall be received in evidence, not only of fact that such instrument, copy or affidavit was received and led according to indorsement of clerk thereon and of no other fact. *Ibid.*, 2318.

Whenever it appears upon trial of any action against sheriff, coroner, constable or other officer for recovery of possession of personal property or value thereof that defendant obtained possession of such property by virtue of execution or writ of attachment against property of person not party to action, from whom plaintiff claims to have derived his right by a mortgage, and that such property was taken by officer from possession of the defendant at such execution or attachment or from premises occupied or controlled by him and it shall be alleged in answer of defendant that mortgage was fraudulent as to creditors of mortgagor, then burden of proof shall be upon plaintiff to show that mortgage was given in good faith and to secure an actual indebtedness and the amount thereof. *Ibid.*, § 2319.

No contract for future purchase, sale, transfer or delivery of personal property shall be void when either party intends, in good faith, to perform same; and intention on part of either not to perform shall not invalidate it if other party shall in good faith intend to perform same. No such contract shall be void because vendor was not, at time it was made, owner of property contracted to be sold; and in any action by either party for enforcement of its terms or to recover damages for breach it shall be incompetent to show in defense, by any extrinsic evidence, that contract had any other intent or meaning than it expresses; and it and all collateral contracts, agreements or securities growing out thereof or of which they may have formed the consideration in whole or in part shall be legal and valid; but nothing herein shall be construed to exclude evidence of fraud in procuring of any such contract as is first mentioned herein, or of any collateral contract, agreement or security growing out thereof, or that any such contract was not entered into upon sufficient consideration, or is not supported thereby, or that both parties intended to make wagering contract. *Ibid.*, § 2319a.

Contracts for sale of furniture or other household effects, made on condition that title shall not pass until price paid in full, whether in form of lease or otherwise, shall be in writing and copy thereof shall be furnished vendee by vendor at time of sale; and all payments made by or in behalf of vendee and all charges, whether in nature of interest or otherwise, as they accrue shall be indorsed by vendor upon copy if vendee so requests. If vendor fails to comply with any of these provisions through negligence his rights under contract shall be suspended while default continues; and if he refuses or wilfully or fraudulently fails to comply therewith he shall be deemed to have waived conditions of sale. Vendor, upon taking possession of such furniture or effects for non-compliance with terms of contract, shall furnish vendee or other person in charge thereof itemized statement of account, showing amount due, and vendee may, at any time within fifteen days after such taking, redeem property so taken by paying to vendor full amount of price then unpaid, with interest and all lawful charges and expenses. Said fifteen days shall not begin to run until statement is furnished, in case vendee or other person in charge can be found by vendor by exercise of reasonable care and diligence. *Ibid.*, § 2319b.

When goods and chattels are pledged or mortgaged for payment of money or performance of any contract or agreement the right and interest in such goods of person making pledge or mortgage may be sold on execution against him, and purchaser shall acquire all his right and interest, and be entitled to possession of goods and chattels on complying with terms and conditions of pledge or mortgage; but officer shall not take such property out of possession of pledgee or mortgagee, when judgment debtor not entitled to possession thereof unless judgment creditor or purchaser shall have first complied with terms and conditions of pledge or mortgage. *Ibid.*, § 2988.

Person having conveyed personal property by mortgage, who shall, during existence of lien or title created by such mortgage, sell, transfer, conceal, remove or carry or drive away said property or any part thereof, or cause same to be done, without consent of mortgagee or assigns and with intent to defraud, shall be punished by imprisonment or fine. *Ibid.*, § 4467.

All property in the state of defendant named in writ of attachment, not exempt from execution, shall be liable to be attached. *Ibid.*, § 2738.

All mortgages, liens, bills of sale or other written instruments in any way affecting ownership of any marked logs in any lumber district which shall specify marks placed upon said logs and when they were cut shall be recorded in office of lumber inspector in which said marks are recorded; and no such conveyance, lien, mortgage or transfer shall be valid, except as to parties thereto, until same is so recorded or until same is filed with some deputy lumber inspector, who shall immediately forward instrument to inspector of proper district. Such filing and recording of all such instruments and papers shall have same effect as recording of deeds and mortgages in office of register of deeds. *Ibid.*, § 1739.

In all cases where railroad equipment and rolling stock have been or are sold to any person, firm or corporation to be paid for in whole or in part in installments, or are leased, rented, hired or delivered on condition that same may be used by person, firm or corporation purchasing, leasing, renting, hiring or receiving same, and that title shall remain in vendor, lessor, renter, hirer or deliverer of same until agreed upon price of or rent for property fully paid, such condition in regard to the title so remaining shall be valid as to subsequent purchasers in good faith and creditors, in case term during which the installments or rent are to be paid shall not exceed ten years and such contract shall be in writing and be recorded in office of secretary of state, and on each locomotive or car sold or leased the name of vendor or lessor or assignee of vendor or lessor shall be marked in conspicuous place followed by word "owner" or "lessor," as case may be. *Ibid.*, § 1839a.

WYOMING.

Any person, firm or corporation may mortgage by any proper bond, conveyance or instrument intended to operate as mortgage, executed in accordance with and subject to provisions of this title (entitled Contracts relative to Real and Personal Property, Title I of Division Two, §§ 2728-2842), possessory claims to public lands, all buildings, fences, ranches and improvements thereon; all quartz, coal and other mining claims and all such personal property as shall be fixed in its structure to the soil; all neat cattle or herds of cattle, horses, mules, sheep or other live stock; and any and all other personal property owned, occupied or in possession of such mortgagor at time of making bond, conveyance or instrument intended to operate as mortgage; and also all personal property of like kind and character as that described in such mortgage, bond, conveyance or instrument, intended to operate as mortgage, thereafter to be acquired, owned, occupied or possessed by such mortgagor; and this section shall apply to all mortgages, bonds, conveyances and instruments intended to operate as mortgages, heretofore as well as hereafter made, executed and recorded as provided in this chapter (entitled Chattel Mortgages, chap. 6, §§ 2805-2828.) Revised Statutes of 1899, § 2805.

In mortgage, bond, conveyance or instrument intended to operate as mortgage upon neat cattle, horses, mules, sheep or other live stock, or upon herd of neat cattle, horses, mules, sheep or other live stock in state, given, made, executed and recorded as required by provisions of this title, by person, firm or corporation, it shall be sufficient description of such cattle, horses, mules, sheep and other live stock to set forth therein all such brands and marks of same as will convey to mortgagee in all particulars power and ability to identify, prove and recover any and all of such stock that was possessed by mortgagor at time of making mortgage; together with ranches or range upon which such cattle, horses, mules, sheep or other live stock shall

be running or ranging; and such mortgage, bond, conveyance or instrument intended to operate as mortgage shall convey and cover all cattle, horses, mules, sheep or other live stock which are then marked or branded with said mark and brand belonging to mortgagor, and which thereafter may be acquired by him, and be marked and branded with said mark and brand, and also such mark and brand; and also all the increase of such cattle, horses, mules, sheep or other live stock, and herds of cattle, horses, mules, sheep or other live stock. *Ibid.*, § 2806.

Mortgage, bond, conveyance or other instrument intended to operate as mortgage of goods, chattels or personal property, shall be executed and acknowledged in same manner as provided by law for execution of conveyances of real estate; but no instrument shall operate as chattel mortgage unless it shall state distinctly upon its face that it is intended for security, and shall also state amount for which it is security. *Ibid.*, § 2807.

Each member of co-partnership must execute and acknowledge mortgage, bond, conveyance or other instrument intended to operate as chattel mortgage for and on behalf of co-partnership; but chattel mortgage may be given to co-partnership in its co-partnership name without enumerating the several members. *Ibid.*, § 2808.

Chattel mortgage shall extend to and include day on which last instalment or portion of indebtedness thereby secured shall mature. *Ibid.*, § 2809.

Chattel mortgage to co-partnership shall only be released and discharged or assigned, transferred and set over, either by endorsement upon original instrument or by instrument executed and acknowledged by each member. *Ibid.*, § 2810.

Mortgage, bond, conveyance or other instrument intended to operate as mortgage of goods, chattels or personal property, not accompanied by immediate delivery and followed by continued change of possession is void against creditors of mortgagor and subsequent mortgagees or purchasers in good faith, unless filed as hereinafter provided. *Ibid.*, § 2811.

Mortgage, bond, conveyance or other instrument intended to operate as chattel mortgage shall be filed in office of county clerk where property is, and shall be indexed by clerk of county in book called "Chattel mortgage index"; upon the filing, county clerk shall enter in index name of mortgagor, name of mortgagee, in alphabetical order, date of instrument, day and hour of filing, amount for which it is security and date of maturity of mortgage, together with brief description or reference to mortgaged property, and upon release, discharge or assignment, he shall enter in suitable columns opposite original entry of filing, date of assignment, date of filing of assignment, and assignee thereof, or in case of release of said instrument, date of discharge, satisfaction or release, and by whom released, satisfied or discharged; the release, satisfaction, discharge or assignment of chattel mortgage may be endorsed upon original instrument on file in clerk's office, or by instrument of release and discharge or assignment executed and acknowledged in manner provided for a chattel mortgage, which shall be filed with, and by the clerk be attached to original instrument in his office. *Ibid.*, § 2812.

Instead of filing original instrument, a copy, certified by clerk of county where instrument is to be filed for record, which certificate shall be endorsed upon said copy by clerk of said county and under his seal, may be filed in place of original, and when so certified and filed, shall have same force and effect as original, and either original or certified copy may be offered and shall be received in evidence in all courts of state with like and equal effect. *Ibid.*, § 2813.

In the cases hereinafter provided for the mortgaging of cattle, horses, mules, sheep or other live stock, it shall be sufficient, if mortgage, bond, conveyance or other instrument intended to operate as chattel mortgage is

filed in county where range upon which the same are or shall be principally running or ranging, is located, the location of which range shall be described with reasonable certainty in mortgage. *Ibid.*, § 2814.

In case of removal of mortgaged property during term of validity of mortgage, bond, conveyance or other instrument intended to operate as chattel mortgage to other county by consent of mortgagee, mortgage, bond, conveyance or other instrument intended to operate as chattel mortgage or copy shall be certified by clerk of county where instrument filed, and shall thereupon be immediately filed in county to which property removed; but this section shall not apply to live stock, horses or mules temporarily used, driven or grazed in county other than that in which the herd may belong or is permanently located. *Ibid.*, § 2815.

Mortgage, bond, instrument or conveyance intended to operate as chattel mortgage shall take effect and be in force from and after time of delivering same to clerk for filing and not before, as to all creditors and subsequent purchasers and mortgagees in good faith for valuable consideration and without notice, and shall be void as to any such subsequent purchaser and mortgagee for valuable consideration in good faith and without notice, whose mortgage, bond, conveyance or other instrument intended to operate as chattel mortgage shall be first filed; but shall be valid between the parties, anything contained in this chapter to contrary notwithstanding, until debt thereby secured is fully paid. *Ibid.*, § 2816.

Mortgage, bond, conveyance, or other instrument intended to operate as mortgage, filed in pursuance of this chapter, shall remain in full force and validity for term for which given, and for sixty days thereafter, and where no specific time stated therein, the said terms shall be deemed and held to be given for one year from date of its execution; but the same shall cease to be valid against creditors of person or persons making same and subsequent purchasers or mortgagees in good faith, after expiration of sixty days from and after end of term for which given, unless before expiration of the said sixty days notice of foreclosure is given as required by law, or mortgagee, heirs, legatees, executors, administrators or assigns, or other legal representatives, or agent or attorney of mortgagee or his assigns shall make affidavit exhibiting interest of owner and holder at time of making affidavit, in such mortgage, bond, conveyance or other instrument intended to operate as mortgage, and if such mortgage is to secure payment of money, amount yet due and unpaid, and affidavit shall be filed in all respects as original mortgage is by this chapter required to be filed, and original mortgage shall then continue to be in full force for period of one year after expiration of term for which originally filed, and like affidavit may be filed within sixty days after expiration of said period of one year last aforesaid, and said original mortgage shall then continue to be in full force for period of one more year, and in addition to first year's renewal thereof, and under same conditions and within same limitations a like affidavit may be filed to renew said mortgage for each succeeding year thereafter until debt secured thereby is fully paid. And it shall be duty of county clerk in whose office original mortgage, bond, conveyance or other instrument intended to operate as mortgage was originally filed, upon filing of affidavit hereinbefore required, to note upon original instrument the filing of such affidavit and the subsequent affidavits of renewal, together with reference on index, opposite original record of instrument. *Ibid.*, § 2817.

Parties to mortgage, bond, conveyance, or other instrument intended to operate as mortgage of personal property as provided by law, may insert therein permission to mortgagor to use, handle, operate, herd, manage and control property mortgaged, and to market, sell and dispose of such portions

thereof, as may be necessary in course of business, or to preserve and care for same, and replace such property, or parts sold, with other property of like kind or character, which property replaced may be purchased, either with net proceeds of mortgaged property sold, or otherwise, all of which shall be subject to operation and effect of such mortgage, bond, conveyance, or instrument. But unless permission expressly given otherwise in mortgage, mortgagor shall pay over to mortgagee all moneys received from sale of any part of mortgaged property. *Ibid.*, § 2818.

Mortgage, bond, conveyance or instrument intended to operate as mortgage, containing and giving to mortgagee, or other person a power to sell property described therein upon default in condition of such mortgage, bond, conveyance or instrument, may be foreclosed in cases and manner herein-after specified. *Ibid.*, § 2819.

To enable any person to foreclose such mortgage, bond, conveyance or instrument intended to operate as mortgage, it is requisite, first, that default in a condition of same shall have occurred by which power to sell becomes operative; second, that no suit or proceeding has been instituted at law to recover debt or obligation then remaining secured by same, or any part thereof, or, if instituted, has been discontinued, or that execution on judgment thereon has been returned unsatisfied in whole or part; and, third, that mortgage or conveyance containing power of sale has been duly recorded as required by this chapter. *Ibid.*, § 2820.

Notice that mortgage or conveyance will be foreclosed by sale of mortgaged property, or part, shall be given by advertisement published in weekly newspaper published in county in which sale shall take place, for three times in three consecutive issues of such newspaper; or in case no weekly newspaper published in said county, by posting up notices in at least three public places in county, one of which shall be at place designated in said notices for the sale to take place, and such notices shall be posted at least three weeks prior to day of sale. *Ibid.*, § 2821.

Each such notice shall specify date of mortgage, bond, conveyance or instrument intended to operate as mortgage, and date when and place where filed; names of mortgagee and mortgagor and assignee of mortgage, if any; amount claimed to be due thereon at time of first publication or posting of notice; description of mortgaged property conforming substantially with that contained in mortgage; and time and place of sale. *Ibid.*, § 2822.

Sale may be postponed, from time to time, by inserting notice of postponement as soon as practicable, in newspaper in which original notice published, and continuing publication until time to which sale postponed; or in case no newspaper is published in county in which sale is to be had, by posting notices of adjournment in same manner and at same places as original notices were posted, as required by this chapter. *Ibid.*, § 2823.

Sale shall be at public auction, in day time, between hours of ten a. m. and four p. m., in county where mortgage first filed, or in any county to which property removed by consent of parties and in which mortgage filed. *Ibid.*, § 2824.

When property, goods or chattels so to be sold, consists of neat cattle, horses, mules, sheep or other live stock, or of any herd or part of any herd of neat cattle, horses, mules, sheep or other live stock, or of any brand or mark by which the same shall be known, designated, marked or branded; or of possessory claims to public lands, and buildings, fences, ranches and improvements thereon; or of any quartz, coal or other mining claims; such sale may take place at court house in county where such mortgage, bond, conveyance or instrument intended to operate as mortgage was first filed; or in case property to be sold has been removed to another county, by con-

sent of the parties as hereinbefore provided, then sale may be had and take place at court house in county to which property has been removed and where such mortgage, bond, conveyance or instrument has been filed as hereinbefore required. In all other cases sale shall take place in view of said property. *Ibid.*, § 2825.

Mortgagee, assignees, and his or their legal representatives, may fairly and in good faith purchase any of mortgaged property offered at such sale. *Ibid.*, § 2826.

Mortgages, bonds, conveyances or instruments intended to operate as mortgages of personal property, given and filed under this chapter, shall be deemed and held to contain implied covenant, unless contrary is therein expressed, by mortgagor to pay debt, or obligation and interest specified in such mortgage, bond, conveyance or instrument; and when same foreclosed, as herein provided, all equity of redemption which mortgagor may or might have had, shall be extinguished; and in case deficiency remain after sale, mortgagor may be held liable for it in action at law. *Ibid.*, § 2827.

County clerk of each county in state may deliver to mortgagor of any chattel mortgage filed in his office and fully paid, satisfied and discharged by mortgagee or mortgagees thereof, said chattel mortgage, either personally or by mail, with word "paid" written, printed or stamped in some conspicuous place thereon. *Ibid.*, § 2828.

Any person who, after having conveyed any goods, chattels, personal property, rights or privileges to another, by mortgage, bond, conveyance or instrument intended to operate as mortgage, when of record or otherwise, shall, during existence of lien created thereby, sell or attempt to sell, or dispose of said property, rights, or privileges, or any part, to any person or persons, or corporation, without first procuring written consent of mortgagee to sale, or shall remove or attempt to remove such property, or part thereof, out of jurisdiction of district court of county wherein property was at time mortgage given, with intent to deprive mortgagee of his security without first obtaining consent in writing of mortgagee to such removal, is guilty of felony. *Ibid.*, § 5012.

No sale, contract or lease wherein transfer or title of ownership of personal property is made to depend upon any condition, shall be valid against purchaser or judgment creditor of vendee or lessee in possession, without notice, unless same be in writing, signed by vendee or lessee, and original or copy filed in office of county clerk of county wherein property is; said instrument so filed shall have attached thereto affidavit of vendor or lessor, or agent or attorney, which shall set forth names of vendor and vendee, or lessor and lessee with description of property transferred and full and true interest of vendor or lessor therein. Such sales or transfers shall cease to be valid against purchasers in good faith, or judgment or attaching creditors without notice at expiration of one year from date of sale, unless vendor or lessor, shall within thirty days prior to the one year from the date of such sale or transfer, file similar affidavit to one above provided for in office of said clerk, and said vendor or lessor may preserve validity of said sale or transfer of such personal property by annual refileing in manner aforesaid of such copy. County clerk, on presentation, shall file such instrument in his office and index same in same manner as chattel mortgages. *Ibid.*, §§ 2837, 2838.

In contract for sale of railroad or street railway equipment or rolling stock, it may be agreed that title to property sold or contracted to be sold, although possession delivered immediately or subsequently, shall not vest in purchaser until purchase price fully paid, or that seller shall have lien for unpaid purchase money. And, in contract for leasing or hiring of such property, it may be stipulated that there be conditional sale at termination of contract, and rentals or amounts to be received under contract, may, as paid, be treated as purchase money, and title to property shall not vest in

lessee or bailee until purchase price paid in full and terms of contract fully performed, notwithstanding delivery to and possession by lessee or bailee; but no such contract shall be valid against subsequent judgment creditor, or subsequent bona fide purchaser for value and without notice, unless evidenced by instrument executed by parties and acknowledged by vendee or lessee or bailee, as case may be, or duly proved, like a deed, and filed for record in office of secretary of state, and unless each locomotive engine, or car so sold, leased, or hired, or contracted to be sold, leased or hired shall have name of vendor, lessor, or bailor plainly marked on each side, followed by word "owner" or "lessor" or "bailor," as case may be. These contracts shall be recorded by secretary of state in book of records to be kept for that purpose. On payment in full of purchase money, and performance of terms and conditions stipulated in contract, a declaration in writing to that effect may be made by vendor, lessor, or bailor, or assignee, on margin of record of contract, duly attested, or by separate instrument, acknowledged by vendor, lessor, or bailor or assignee, and recorded as aforesaid. *Ibid.*, §§ 2839, 2840.

Statutes relating to filing, recording, interpretation, or validity of chattel mortgages shall not affect the recording, interpretation, or validity of contracts of the character hereinbefore named, but the same shall be controlled by the provisions of this chapter (entitled Conditional Sale—Railroad Equipment, chap. 9, §§ 2839–2842) alone. And contracts hereinbefore named shall not be affected by provisions of preceding chapter (entitled Conditional Sales, chap. 8, §§ 2837, 2838). *Ibid.*, § 2842.

CHAPTER XIX.

CLERKS AND CRIERS.

THE power and duties of clerks of court are generally prescribed by statute. If a clerk has by law a deputy, acts which are in their nature ministerial, such as signing and sealing papers, may be done in the clerk's name by the deputy.

The statute also requires clerks of counties and of courts of record, and registers of deeds, to keep open office every day (except Sundays and holidays, and half holidays), and fixes the hours during which they shall remain open.

The following forms are those which are used in open court by clerks or criers. Forms of judgments and other records in actions and special proceedings will be found in the volumes of forms in Practice and Pleading; and forms of certificates and other acts of various kinds will be found under their appropriate heads in this volume, such as chapters on ACKNOWLEDGMENT AND PROOF OF DEEDS; OATHS; SEARCHES, etc.

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601. Proclamation on Opening Court.

Hear ye, hear ye, hear ye: All manner of persons that have any business to do at this [*here name the court — e. g., thus:*] trial term of the supreme court, held in and for the county of _____, let them draw near and give their attendance, and they shall be heard.

602. Proclamation for Sheriff to Return Process.

Sheriff of the county of _____: Return the writs and precepts to you directed and delivered, and returnable here this day, that the court may proceed thereon.

603. Proclamation for Magistrates, etc., to Return Recognizances, etc.

All justices of the peace, coroners, sheriffs, and other officers, who have taken any recognizances, examinations, or other matters: return the same to the court here, that they may proceed thereon.

604. Proclamation Before Calling Grand Jury.

You, good men, and true, who are here returned to inquire for the People of the State of New York, for the body of the county of _____: answer to your names, every man, at the first call, and save your fines. [*Here call them by name, one by one in their order.*]

605. Oath of the Foreman of the Grand Jury.

You, as foreman of this grand inquest, shall diligently inquire, and true presentment made, of all such matters and things, as shall be given to you in charge; the counsel of the people, of your fellows, and your own, you shall keep secret: you shall present no one from envy, hatred, or malice; nor leave any one unrepresented, for fear, favor, affection, reward, or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding. So help you God.

606. Oath of Grand Jurors.

The same oath your foreman has now taken on his part, you and each of you shall well and truly observe and keep on your part. So help you God.

607. Proclamation for Silence on Charging Grand Jury.

All persons are strictly charged and commanded to keep silence, while the court is giving the charge to the grand jury, on pain of imprisonment.

608. Proclamation Calling Constables.

Constables of the county of _____: Answer to your names, every man, at first call, and save your fines.

609. Proclamation Before Calling Petit Jury.

Hear ye, hear ye, hear ye: You, good men, who are here returned, to try the several issues to be tried at this circuit court and court of oyer and terminer, held in and for the county of _____, answer to your names at the first call, and save your fines.

610. Proclamation for Imposing Fines.

Hear ye, hear ye, hear ye: The court has imposed a fine of _____ dollars, upon each of the following persons, for their non-attendance as grand jurors [*or*, petit jurors; *or*, constables], at this court — to wit: A. B., of _____, etc., etc.

611. Proclamation for Persons to Appear on Recognizances.

Hear ye, hear ye, hear ye: All manner of persons who are bound by recognizances to prosecute, or prefer, any bill of indictment, against any prisoner or other person, let them come forth and prosecute, or they will forfeit their recognizances.

612. Proclamations for Persons Bound to Answer.

Hear ye, hear ye, hear ye: A. B., come forth and answer to your name, and save yourself and your hail, or you will forfeit your recognizance.

613. Proclamation for Bail to Produce Principal.

Hear ye, hear ye, hear ye: C. D. and E. F., bring forth A. B., your principal, whom you have undertaken to have here this day, or you will forfeit your recognizance.

614. Proclamation for Discharge of Persons Against Whom no Bills are Found.

Hear ye, hear ye, hear ye: If any man can show cause why A. B. should stand longer bound [*or*, imprisoned], let him come forth, and he shall be heard, for he stands upon his discharge.

615. Proclamation for Discharge.

Hear ye, hear ye, hear ye: No cause being shown why A. B. should longer remain in custody of the sheriff of the county of _____, he is discharged.

616. Proclamation for Arraignment of Prisoners.

All persons are strictly charged and commanded to keep silence while the court proceed to arraign the prisoners on indictment for felony.

617. Arraignment of a Person Indicted.

[*After reading the indictment to the prisoner; or saying to him*] The grand jury have indicted you for a felony [*or*, a misdemeanor], and stating the facts charged in the indictment.]

Do you demand a trial on this indictment? [*or*, Do you plead guilty or not guilty to this indictment?]

618. Proclamation for Petit Jury on the Same.

You, good men, who are here returned to inquire between the People of the State of New York, and A. B., the prisoner at the bar, answer to your names as you are called, and save your fines.

619. Address of Clerk to the Prisoner, Before Calling the Jury.

A. B.: These good men that you shall now hear called, are the jurors who are to pass between the People of the State of New York and you [*or, if a capital case, to pass upon your life and death*]; if, therefore, you will challenge them, or any of them, you must challenge them as they come to the hook to be sworn, and before they are sworn, you shall be heard. [*The crier then calls the jurors, one at a time, as they are drawn by the clerk; and when the juror comes to the stand, and is ready to be sworn, the clerk says: Juror, look upon the prisoner; prisoner, look upon the juror.*]

620. Oath of Juror on a Trial for Felony.

You shall well and truly try, and true deliverance make, between the People of the State of New York, and A. B., the prisoner at the bar, whom you shall have in charge, and a true verdict give, according to the evidence. So help you God.¹

621. Oath of Trier on a Challenge to the Favor.

You shall well and truly try and find whether M. N., the juror challenged, stands indifferent between the People of the State of New York and the prisoner at the bar. So help you God.

622. Oath of a Witness Before the Triers.

You shall true answers make to such questions as shall be put to you, touching the challenge of M. N., as a juror. So help you God.

623. Finding of the Triers.

The finding is, that M. N. stands indifferent [*or, not indifferent*].

624. Proclamation Requiring a Witness under Recognizance to Appear and Testify.

Hear ye, hear ye, hear ye: G. H., who is bound by recognizance to give evidence against A. B., the prisoner at the bar, come forth, answer to your name, and give evidence, or you will forfeit your recognizance.

625. Oath of a Witness on a Trial for Felony.

The evidence you shall give between the People of the State of New York and A. B., the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God.

626. Proclamation Before Sentence Pronounced.

Hear ye, hear ye, hear ye: All manner of persons are commanded to keep silence, while judgment is given against the prisoner at the bar, upon pain of imprisonment.

627. Proclamation Before Calling Jury on a Trial for Misdemeanor.

You, good men, who are here returned to try this issue of traverse, between the People of the State of New York and A. B., the defendant, answer to your names as you are called, and save your fines.

¹ The following statutory form of an oath is prescribed in New York State by § 711, Crim. Pro., "You do swear" (or, "you do solemnly affirm," as the case may be), "that you will well and truly try this issue, between the people of the State of New York and A. B. the defendant, and a true verdict give, according to the evidence."

628. Oath of Juror on a Trial for a Misdemeanor.

You shall well and truly try this issue of traverse between the People of the State of New York and A. B., the defendant, and a true verdict give therein, according to the evidence. So help you God.

629. Oath of a Witness on a Trial for a Misdemeanor.

The evidence you shall give in this issue of traverse, between the People of the State of New York and A. B., the defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God.

630. Oath of Witness on the Trial of a Justice, on Charges.

The evidence you shall give between the People of the State of New York and Y. Z., on charges made against him as a justice of the peace, shall be the truth, the whole truth, and nothing but the truth. So help you God.

631. Address of the Clerk on Taking a Recognizance to Appear.

You [and each of you] acknowledge yourself [*or, yourselves*] to be indebted to the People of the State of New York in the sum of dollars [*or, to wit: you, A. B., in the sum of \$300, and you, C. D., in the sum of \$200*] to be levied of your [and each of your] goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the conditions following — to wit: The condition of this recognizance is such, that if you [*or, the said A. B.*] shall appear at the next court of sessions [*or, of oyer and terminer*], to be held in and for the county of , then and there [*or, from day to day during the sitting of the court*]*to answer and stand trial upon a certain indictment against you [*or, to testify and give evidence on the trial of a certain indictment against M. N.*] for felony [*or, misdemeanor*], and not depart the court without leave, and abide its order and decisions, then this recognizance to be void; otherwise, to remain in full force and virtue. Are you [and each of you] content?

632. The Same; On Recognizance to Keep the Peace, or for Good Behavior.

[*As in the preceding form to the *, and then continuing:*] to answer and stand trial upon a certain indictment against him, for [*stating the offense*], and shall also in the meanwhile keep the peace towards Y. Z. and all the other good people of this state [*or, and shall also in the meanwhile be of good behavior*], then this recognizance to be void; otherwise, to remain in full force and virtue. Are you and each of you content?

633. Taking Verdict on a Trial for Felony.

Gentlemen of the jury: Please answer to your names [*Here call them one by one.*] Have you agreed upon your verdict? [*After the answer, say:*] Jurors, look upon the prisoner. Who shall say for you? [*The foreman rises.*] How say you? do you find the prisoner at the bar guilty of the felony [*or, murder*] whereof he stands indicted; or not guilty? [*The foreman answers:*] Guilty [*or, Not guilty.*] [*Then the clerk adds:*] Hearken to your verdict, gentlemen, as the court has recorded it. You say you find the prisoner at the bar guilty [*or, not guilty*] of the felony [*or, murder*] whereof he stands indicted; and so you say all.

634. Polling Jury in the Same.

[When the polling of the jury is demanded, the clerk will begin with the first name on the panel:] A. B., how do you find the prisoner at the bar? guilty or not guilty? [When the foreman has answered, call the next juror, as follows:] C. D., is that your verdict? [Then proceed in the same manner through the whole panel, and when all have answered, say:] Then, gentlemen of the jury, hearken to your verdict, as the court has recorded it. You say you find the prisoner at the bar * guilty of the felony [or, murder] whereof he stands indicted; and so you say all.¹

635. Taking Verdict in Other Criminal Cases.

Gentlemen of the jury: Please answer to your names. [Here call them one by one.] Have you agreed upon your verdict? [After the answer is given, say:] Who shall say for you? [The foreman rises.] How say you? do you find the prisoner at the bar guilty of the misdemeanor [or, assault and battery, and riot; or, riot; or, offense; or, crime], whereof he stands indicted; or not guilty? [The foreman answers:] Guilty [or, Not guilty]. [Then the clerk adds:] Hearken to your verdict, gentlemen, as the court has recorded it. You say you find the prisoner at the bar guilty [or, not guilty] of the misdemeanor [or, assault and battery, and riot; or, riot; or, offense; or, crime] whereof he stands indicted; and so you say all.

636. Polling Jury in the Same.

[As in Form 518, to the *, and then concluding thus:] guilty of the misdemeanor [or, assault and battery, and riot; or, riot; or, offense; or, crime] whereof he stands indicted; and so you say all.

637. Proclamation for Jury in a Civil Cause.

Hear ye, hear ye, hear ye: You, good men, who are here impaneled and returned to try this issue, joined between A. B., plaintiff, and Y. Z., defendant, answer to your names as you are called, and save your fines.

638. Oath of Jurors in a Civil Cause.

You and each of you shall well and truly try the several issues which you shall have in charge at this trial term of the supreme court, and true verdict give in them respectively, according to evidence. So help you God.

639. Oath of Triers in a Civil Cause, Upon a Challenge for Favor.

You shall well and truly try, and truly find, whether E. F., the juror challenged, stands indifferent between A. B., plaintiff, and Y. Z., defendant, in the issue about to be tried. So help you God.

640. Oath of Witness on a Challenge of a Juror.

You shall true answers make to such questions as shall be put to you, touching the challenge of E. F., a juror. So help you God.

641. Proclamation for Plaintiff to Appear and Prosecute.

A. B., appear and prosecute your action, or your default will be entered.

¹ The following form is also frequently used in New York State: "Gentlemen of the jury, answer to your names as you are called. A. B., how say you, do you find the prisoner at the bar guilty of the felony (or misdemeanor, or crime, etc., as the case may be) whereof he stands indicted, or not guilty? (Proceed in the same manner in polling the jurors.)"

642. Proclamation for Defendant on an Inquest.

Y. Z., come forth and make your challenges, or you will lose your challenges, and inquest will be taken against you by default.

643. Proclamation Calling a Witness to Answer on a Subpoena.

M. N., come forward and testify in this issue, joined between A. B., plaintiff, and Y. Z., defendant, according to the command of a subpoena therein served on you, or your default will be entered.

644. Oath of a Witness to Give Testimony.

You do solemnly swear that * the evidence you shall give in this matter in difference [*or, issue, joined*] between A. B., plaintiff, and Y. Z., defendant, shall be the truth, the whole truth, and nothing but the truth. † So help you God.

645. The Same; By the Uplifted Hand.

You do swear, in the presence of the ever-living God, that [*continuing as in preceding form from the * to the end*].

646. Affirmation of Witness.

You do solemnly, sincerely, and truly declare and affirm that [*continuing as in Form 528 from the * to the †*].

647. Oath on the Voire Dire.

You shall true answers make to such questions as shall be put to you, touching your interest in the event of this cause. So help you God.

648. Entry when an Attachment Issues Against a Witness.

Court.

The People

v.

Y. Z.

On reading and filing an affidavit of the due service of a subpoena on M. N., to appear here this day as a witness on the trial of this indictment, and he being called and not appearing, and on motion of Q. R., Esq., district attorney, ordered that an attachment issue against the said M. N.

649. Oath of Interpreter.

You shall truly interpret between the court, the jury, the counsel and the witness, E. F., in this issue joined between A. B., plaintiff, and Y. Z., defendant. So help you God.

650. Oath of Interpreter to a Deaf and Dumb Witness.

You shall well and truly interpret between the court, the jury, the counsel and the witness, E. F., here produced in behalf of A. B., in this issue joined between A. B., plaintiff, and Y. Z., defendant. So help you God.

651. Oath of Party, or Interested Witness, Preliminary to Evidence of the Contents of a Paper not Produced.

You shall true answers make to such questions as shall be put to you touching the power or control you have over any paper or the loss or destruction of any paper which would be proper evidence in this cause. So help you God.

652. Oath of a Party, or Interested Witness, Preliminary to Proving the Handwriting of a Subscribing Witness.

You shall true answers make to such questions as shall be put to you touching your [*or*, the plaintiff's; *or*, defendant's] ability to procure the attendance of G. H., a subscribing witness to this paper [*or*, the paper in question]. So help you God.

653. Proclamation for Adjournment.

Hear ye, hear ye, hear ye: All manner of persons who have any further business to do at this trial term of the supreme court, may depart hence, and appear again to-morrow morning at o'clock, to which time this court is adjourned.

654. Proclamation for Opening Court After Adjournment.

Hear ye, hear ye, hear ye: All manner of persons who have been adjourned over to this hour, and have any further business to do at this trial term of the supreme court, may draw near, and give their attendance, and they shall be heard.

655. Oath of Constables, on Retiring with a Jury, or Jurors, on Leave.

You shall retire with such jurors as have leave of absence from this court; you shall not speak to them yourself in relation to this trial, nor suffer any person to speak to them; and you shall return with them without delay. So help you God.

656. Oath of Constables to Keep Jury on an Adjournment.

You shall retire with the jury to some convenient room, to be furnished by the sheriff; you shall not suffer any person to speak to them, nor speak to them yourself in relation to this trial, and you shall return with them at the order of the court at the next meeting thereof. So help you God.

657. Oath of Constable who Attends the Jury, when they Retire to Consider their Verdict in Civil and Criminal Cases.

You shall well and truly keep every person sworn on this jury, in some private and convenient place, without meat or drink, water excepted;¹ you shall not suffer any person to speak to them, nor speak to them yourself, without leave of the court, except it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict. So help you God.

The following is a statutory form of an oath in New York, prescribed by section 713, Code Crim. Pro.:

"You do swear, that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

658. Taking Verdict in a Civil Cause.

Gentlemen of the jury: Please answer to your names. [*Call them one by one.*] Have you agreed upon your verdict? * How do you find? [*The foreman states the finding of the jury; the clerk then enters the verdict and continues:*] Gentlemen, listen to your verdict as it stands recorded. You say you find [*etc., as the finding may be*]; and so you say all.

¹ The doctrine of compelling the jury to See opinion by Parker, C. J., in *People v. Sheldon*, 156 N. Y., 268.
an agreement by withholding meat or drink has been greatly modified in modern times

659. Entry of Verdict.

At a trial term of the supreme court, held in and
for the county of _____, on the _____ day
of _____, _____.

Present: Hon. J. K., justice.

| |
|----------------------------------|
| A. B. <i>against</i> Y. Z. |
|----------------------------------|

JURORS.

[Insert names.]

WITNESSES.

[Insert names.]

Verdict for defendant [or, verdict for plaintiff, damages, \$ _____; or, verdict for plaintiff against defendant, Y. Z., damages, \$ _____, and verdict for the defendant, E. F.; or, if it be a special verdict, insert the same at length]. *

[Signature of clerk.]

660. Entry of Verdict, with Assessment of Value of Personal Property.

Title as in No. 659.

[As in the preceding form to the *, and then add:] and the jury assess the value of the said [mention the property in question] at _____ dollars: [If necessary, add: and they further assess the damages of the said defendant by occasion of the delivery and detention of the said property, at _____ dollars.]

[Signature of clerk.]

661. Entry of Judgment.

Supreme Court.

| |
|----------------------------------|
| A. B. <i>against</i> Y. Z. |
|----------------------------------|

Judgment,

[Date.]

This cause being at issue upon the facts and a trial by jury having been had, on which a verdict was found for the plaintiff, that, etc. [state the finding; or, if there was no jury, say: and the same having been submitted to the court, decision was rendered, etc.]

Now, on motion of G. H., attorney for the plaintiff, it is ordered and adjudged by the said court, that, etc. [as the verdict may be].

662. Taking Verdict where Personal Property is in Question.

[As in Form 658 to the *, and then continue:] How do you find? [The foreman answers: We find the title of the horse in question to be in the plaintiff, and assess the value thereof at one hundred dollars. [The clerk enters the verdict, and then adds:] Gentlemen, listen to your verdict as it stands recorded. You say you find, etc. [as above]; and so you say all.

663. Taking Verdict in Actions for Damages.

[As in Form 658 to the *, and then continue:] How do you find? [The foreman answers: We find for the defendant; or, We find for the plaintiff dollars damages. [The clerk enters the verdict, and again repeats the finding, and makes the inquiry, as in the preceding form.]

664. Taking Verdict in Cases of Lunacy, etc.

[As in Form 658 to the *, and then continue:] How do you find? [The foreman answers: We find that A. B. is a lunatic, of unsound mind, and incapable of managing or conducting his affairs; or, that A. B. was of unsound mind at the time of the execution of the will [or, deed] in question—to wit: on the day of , 18 , and incompetent to execute the same; or, that A. B. was of unsound mind, and incompetent to contract matrimony, at the time of the solemnization of the marriage to E. D.—to wit: on the day of , .] The clerk then enters the verdict, repeats the finding, and makes the inquiry, as in Form 546.]

665. Taking Verdict in Action for Recovery of Real Property.

[As in Form 658 to the *, and then continuing:] How do you find? [The foreman answers: We find the title of the land in question to be in the plaintiff; or, defendant: If there is a claim for the mesne profits, add: and assess the damages for withholding the said premises, against the defendant, at dollars. The clerk enters the verdict, repeats the finding, and makes the inquiry, as in Form 546.]

666. Polling Jury in Civil Cases.

[When the polling of the jury is demanded, the clerk will begin with the first name on the panel:]

A. B., you say you find [as the verdict may be: after the answer is given, then call the next juror]. C. D., is that your verdict? [Proceed in this manner through the list, and when all have answered, say:] Then, gentlemen of the jury, hearken to the verdict, as the court has recorded it. You say you find [as the verdict may be]; and so you say all.

667. Oath on Application to Excuse, or Discharge, a Juror or Constable.

You shall true answers make to such questions as shall be put to you, touching your application [or, the application for and in behalf of E. F.] to be discharged [or, excused] from attendance as a juror [or, constable] at this court. So help you God.

668. Oath on Application of Juror, or Constable, for a Remission of Fine.

You shall true answers make to such questions as shall be put to you, touching your application [or, the application for and in behalf of E. F.] for the remission of your [or, his] fine, for default in attending as a juror [or, constable] at this [or, the last] term of this court. So help you God.

669. Oath of Poor Witness, on Application for Expenses.

You shall true answers make to such questions as shall be put to you, touching your application for the expenses of your attendance at this court, as a witness in behalf of the people of this state. So help you God.

670. Notice of Drawing a Jury.

STATE OF NEW YORK, }
 County of , }
 Clerk's Office.

Notice is hereby given, that on , the day of , , a panel of petit and grand jurors will be drawn at this office, to serve at a trial term of the supreme court [or, court of sessions], to be held in and for the county of , at the City Hall, in the city of , on , the day of .

[Signature of clerk.]

671. Notice of Drawing Additional Jurors.

[Same title as above.]

In the Supreme Court of the state of New York.

WHEREAS, in my opinion, more than thirty-six jurors will be required to attend the trial term of the supreme court, to be next held in and for the county of , on the day of next, I do hereby order and direct that twenty-four additional jurors, to serve at said court, be drawn and summoned according to law.

WITNESS my hand, the day of , .

[Signature of justice of the supreme court of the state of New York.]

[Same title as above.]

Notice is hereby given, that on , the day of , , in pursuance of the foregoing order for twenty-four additional jurors, a panel of petit jurors will be drawn at this office, to serve at a trial term of the supreme court, to be held in and for the county of , at the City Hall, in the city of , on , the day of , .

[Signature of clerk.]

CHAPTER XX.

CONTRACTS.

THE law requires certain contracts to be reduced to writing and signed, in order to give them binding force. The object of this is to prevent misunderstanding, and preclude attempts to prove important contracts by false or loose verbal testimony in cases where the minds of the parties never actually met in agreement. The statute regulating this subject is usually called the Statute of Frauds. It is to the following effect:

In the following cases, every agreement is void, unless such agreement, or some note or memorandum thereof, expressing the consideration,¹ be in writing, and subscribed by the party to be charged therewith:

1. Every agreement that by its terms is not to be performed within one year from the making thereof;
2. Every special promise to answer for the debt, default, or miscarriage of another person;

¹ The requirement that the consideration be expressed has been repealed in New York. See for present provisions in New York, Personal Property Law, §§ 30, 31. Laws of 1863, p. 802, c. 464.

3. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry.

Every contract for the sale of any goods, chattels, or things, for the price of fifty dollars, or more, is void, unless:

1. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged thereby; or,

2. Unless the buyer shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or,

3. Unless the buyer shall, at the time, pay some part of the purchase money.

No interest in lands, other than leases for a term not exceeding one year, nor any trust or power relating to lands, can be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by a deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent, thereunto authorized by writing; but this does not affect wills, implied trusts, etc.

Another rule of law having the same object as one of its reasons is, that where parties have reduced their intentions to writing, the terms of the written instrument, if clear and unambiguous in themselves, are deemed to be the best evidence of what is intended. And the writing cannot be contradicted or varied by parol evidence aiming to show that something different was designed.

A written contract executed by an agent on behalf of a known principal, ought to purport on its face to be the contract of the principal, and to be signed with the name of the principal, and not with that of the agent alone. A person may become bound by any mark or designation he sees fit to adopt, provided he signs it as a substitute for his name, and intends to be bound by it.

No technical words, or order of words, are requisite to make a condition precedent or subsequent, but it depends on the good sense and plain understanding of the contract, and the acts to be performed. The same words may operate as either a condition precedent or subsequent, according to the nature of the transaction, and as evincing the intention of the parties. The precedency depends not upon the order of the clauses, but upon the order of time in which the intent of the transaction requires their performance. It is best, therefore, to have the conditions distinctly expressed, that there may be no doubt of the intention in this respect.

In the case of formal and important contracts, it is usual to affix seals and to have the execution attested by witnesses. The effect of the latter formality is to require the party afterwards seeking to prove the contract in court, to produce the same witness or account for his absence. If the instrument is not attested by a witness, other proof may be resorted to, such as the testimony of the party, handwriting, etc.

As to the necessity of internal revenue stamps upon contracts, see chapter on STAMPS.

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672. General Form of Contract, With Provision for Liquidated Damages in Case of Breach.

THIS AGREEMENT, made the day of , one thousand nine hundred and , by and between A. B., of the town of , in the county of , manufacturer, of the first part, and Y. Z., of , merchant, of the second

part, WITNESSETH, that the said party of the second part covenants and agrees to and with the party of the first part, to [*here insert the subject-matter of the agreement*]. And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of dollars, lawful money of the United States, as follows: the sum of dollars, on the day of , , and the sum of dollars, on the day of , , with the interest on the amount due, payable at the time of each payment.

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of dollars, as liquidated damages, to be paid by the failing party.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands [and seals], the day and year first above written.

[*Signatures, with or without seals.*]

[*If attested by witnesses, add:*]

Signed, sealed, and delivered in the presence of

[*Signatures of witnesses.*]

673. Contract Executed by Agents or Attorneys in Fact.

THIS AGREEMENT, made this day of , , between A. B., of , farmer, of the first part, by C. D., his attorney, and Y. Z., of , merchant, of the second part, by W. X., his attorney, WITNESSETH, that the said party of the first part [*etc., as in other forms to the end, signing thus:*]

A. B. [SEAL.]

By C. D., his Attorney.

Y. Z. [SEAL.]

By W. X., his Attorney.

674. Contract Declaratory of the Construction of a Previous Contract.

THIS AGREEMENT, made the day of , , between A. B., of , of the first part, and Y. Z., of , of the second part:

WHEREAS, a difference has heretofore arisen between the parties to these presents, in relation to their respective rights and obligations under a certain contract, made on the day of , , between them; and the parties hereto have now come to a mutual understanding and agreement respecting all the matters aforesaid, and propose to set forth the same in these presents, as declaratory of their respective rights and obligations from the date hereof, henceforward, for the government of themselves under the same:

NOW, THIS INDENTURE WITNESSETH, that the parties of the second part covenant, promise, and agree to and with the party of the first part [*etc.*, according to the nature of the case].

IN WITNESS [*etc.*, as in Form 672.]

675. Contract with a Clerk or Workman.

THIS AGREEMENT, made this day of , , between A. B., of , of the first part, and Y. Z., of , of the second part, WITNESSETH, that the said A. B. agrees faithfully and diligently to serve the said Y. Z., as clerk, in the store of the said Y. Z. [*or otherwise*], at , for the period of , from and after the day of next, for the sum of dollars per . In consideration of which service so to be performed, the said Y. Z. agrees to pay the said A. B. the sum of per month, [payable as follows: on the day of , and on the day of each month following, during said term, and at the expiration thereof, the balance of such sum as has not then been already paid].

And it is understood and agreed that the death of either of them occurring prior to the expiration of said term of , shall terminate this agreement.

IN WITNESS [*etc.*, as in Form 672.]

676. Contract to Bind a Minor to Service in Payment for His Passage Money.

THIS INDENTURE, made this day of , , between A. B., an infant under twenty-one years of age — to wit: of the age of years on the day of , , coming from in , a foreign county beyond sea, of the one part, and Y. Z., merchant, of the city of , of the other part, WITNESSETH, that the said A. B., in pursuance of the statute in such case made and provided, and in consideration of the covenants herein-after mentioned, does hereby bind himself to serve the said Y. Z. and his executors, administrators, and assigns, for the full term of , from the date hereof, during all of which time the said A. B. shall well and faithfully serve the said Y. Z., and his executors, administrators, and assigns, in all such lawful business as he shall be put to by him, or them, to the best of the power and ability of the said A. B., and that he will at all times behave himself honestly and obediently in said service.

In consideration whereof, the said Y. Z. having brought him from beyond sea as aforesaid, also covenants to and with the said A. B., that he, the said Y. Z., will furnish and allow the said A. B. suitable and sufficient board,

¹See statement of law. *ante* p. 515.

meat, drink, washing and lodging and apparel, and all other necessaries during the said term.

IN WITNESS [*etc., as in Form 672.*]

677. Acknowledgment of the Foregoing Contract.

STATE OF , }
County of , } ss.

On this day of , , before me came the within-named A. B., to me personally known and known to me to be the person who executed the within contract, and on a private examination before me, acknowledged that the same was made and executed by him freely, for the purposes therein expressed.

[*Signature of magistrate.*]

678. Railroad Construction Contract.

THIS AGREEMENT, made this day of , 19 , by and between C. D., party of the first part, and A. & B. Railroad Company, hereinafter called the company, the party of the second part, WITNESSETH:

That for and in consideration of the covenants and payments hereinafter mentioned to be made and performed by the said party of the second part, the said party of the first part doth hereby covenant and agree to furnish all the labor and materials, and perform the work necessary to complete in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of the said party of the second part, the grading, masonry, bridging, and railway superstructure of the said railroad, from its present terminus, at F., to G., a distance of about thirty miles; the said work to be finished as described in the approved plans and following specifications, and agreeably to the directions received from the said chief engineer, on or before the day of , .

SPECIFICATIONS.

The entire work to be constructed and finished in every part in a good, substantial, and workmanlike manner, according to the accompanying drawings and specifications, to the full extent and meaning of the same, and to the entire satisfaction, approval, and acceptance of the chief engineer of the said party of the second part, and under the supervision and direction of such agent or agents as he may appoint.

Additional detail and working drawings will be furnished, in exemplification of the foregoing, from time to time as may be required; and it is to be distinctly understood, that all such additional drawings are to be considered as virtually embraced within and forming part of these specifications. Figured dimensions shall in all cases be taken in preference to scale measurements.

The said chief engineer shall have the right to make any alterations, additions, or omissions of work or materials herein specified, or shown on the drawings, during the progress of the structure, that he may find to be necessary; and the same shall be acceded to by the said party of the first part, and carried into effect, without in any way violating or vitiating the contract.

If any additions, alterations, or omissions are made in the structure during the progress of the work, the value of such shall be decided by the said chief engineer, who shall make an equitable allowance for the same, and shall add the amount of said allowance to the contract price of the work, if the cost has been increased; or shall deduct the amount, if the cost has been lessened, as he, the said chief engineer, may deem just and equitable. The said party of the second part will pay for no extra work or materials, unless ordered in writing by it through its chief engineer.

Any disagreement or difference between the parties to this contract, upon any matter or thing arising from these specifications, or the drawings to which they refer, or to the contract for the work, or the kind or quality of the work required thereby, shall be decided by the said chief engineer of the party of the second part, whose decision and interpretation of the same shall be considered final, conclusive, and binding upon both parties.

All materials and labor used throughout the structure must be the best of their several kinds, and subject to the approval of the chief engineer.

The said chief engineer shall have full power at any time during the progress of the work to reject any materials that he may deem unsuitable for the purpose for which they were intended or which are not in strict conformity with the spirit of these specifications. He shall also have the power to cause any inferior or unsafe work to be taken down and altered at the cost of the said party of the first part. If any materials brought on for the use of the work shall be rejected or condemned by the said engineer as unsuitable, the contractor shall, if required, remove said materials entirely away from the line of the work, so as to effectually guard against their introduction into the same.

Particular care must be taken of all the finished work, which work must be covered up and thoroughly protected from injury or defacement during the erection and completion of the structure.

All refuse material and rubbish that may accumulate during the progress of the work shall be removed from time to time, as may be directed by the chief engineer; and on the completion of the work, the structure, grounds, and streets must be thoroughly cleaned up and the surplus material and rubbish removed.

SPECIFICATIONS FOR GRADING AND MASONRY.

Grading.—1. Under this head will be included all the clearing and grubbing, all excavation and embankment required for the formation of the roadbed ready for the track, cutting of ditches or drains about or contiguous to the road, widening or changing channels for streams or water-courses, the foundations of culverts or walls, reconstruction of millraces, highways, and roads where they are interfered with or destroyed in the formation of the roadway. Also all masonry, foundation pits, planking, piling, pumping, bailing, and all the excavation and embankment in any way connected with, or incident to the construction of said railroad.

2. The road will be graded for single track unless otherwise directed by the chief engineer, and in conformity with such directions as he may give concerning breadths, depths, and slopes of excavation and embankment.

Clearing.—3. The ground to be occupied by the excavations and embankments, together with a space of twelve feet beyond the slope stakes on each side, or ten feet beyond the berme ditch, where one is required, shall be cleared of all trees, brush, and other perishable matter. Where the filling does not exceed two and a-half feet, the trees, stumps, and saplings must be grubbed; but under all other portions of the embankment it will be sufficient that they be cut close to the earth. The clearing will be of such width as directed, and includes the cutting of all small trees and bushes close to the ground, and their piling and burning, if safe to do so without danger to adjacent timber lands or property; large trees must be cut so that their stump is within three feet of the ground, and the top of this stump must be at least three feet under top of embankment. Where fill is less than three feet they must be cut close to the ground. All logs fit for sawing or prop-timber to be collected and piled. Clearing to be paid for per acre or fraction thereof, to the extent directed by the engineer, by stakes, or marks on the ground or timber.

Grubbing.—4. All stumps and roots, muck, and perishable matter shall be grubbed out and removed from within the slope stakes; also near entrance of cuts where the filling is less than two feet; also throughout all the excavation and such other places as the chief engineer may direct. Grubbing to be paid for per acre or fraction thereof, within above-described limits.

EXCAVATION.

Excavation.—5. All excavation shall be measured in the excavations, and paid for per cubic yard, classified as follows, viz.: Solid rock, loose rock, hard-pan, earth, borrowed embankment, and foundation excavation in water.

Solid rock.—6. Solid rock shall include all rock found in ledges and detached masses exceeding one-half cubic yards each, which, in the judgment of said chief engineer, may be best removed by blasting.

Loose rock.—7. Loose rock shall include all kinds of shale, slate, ochre, and other rock, which, in the judgment of said chief engineer, can be removed with pick and bar, and is soft and loose enough to be removed without blasting, although blasting may be resorted to in order to facilitate its working; also detached stones of less than one-half cubic yard and more than one cubic foot.

Hard-pan.—8. Hard-pan shall consist of tough indurated clay or cemented gravel, which requires blasting or other equally expensive means for its removal, or which cannot be plowed with less than four horses and a railroad plow, or which requires two pickers to a shoveler; the said chief engineer to be the judge of these conditions.

Earth.—9. Earth shall include all materials of an earthy nature, of whatever name or character, not unquestionably rock, or hard-pan as above defined.

Drains, ditches, etc.—10. Side drains, ditches, and channels for streams, shall be cut as directed by the chief engineer, the nearest side of which shall not be within fifteen feet of the slope stakes of the excavation or embankment; foundation pits shall be sunk of such dimensions and the material deposited as the engineer directs, and such excavation is to be paid for as part of the ordinary excavation of the section.

Borrow pits excavations.— 11. Generally when the excavations are insufficient to make the embankments the deficiency may be supplied by widening the excavations for double track, if so directed by the chief engineer, or otherwise, may be borrowed from without the line of the road.

Foundation excavations in water.— 12. Foundation excavation in water shall apply only where (through no fault or delay of the contractor) constant unavoidable pumping or bailing is a necessity, and draining by a ditch is too expensive or impossible; the material to be classified same as excavation, and the price to include the necessary benching and dressing of the rock for base of masonry. Where delay occurs in finishing a foundation promptly during dry weather it will be at the contractor's risk as regards excavation in case water is met with by his neglect.

Overhaul.— 13. The embankment shall be formed in layers of such depth, and the materials disposed and distributed in such manner, as the chief engineer may direct, with the required allowance for settling; and in the case where grading is being done for additional tracks, the surface of the old road-bed embankment shall be stepped off to prevent slipping. Material necessarily wasted from the cuttings shall be used in widening the embankments, or be deposited in the vicinity of the road, according to the directions of the chief engineer. Material taken from excavations in their several classes shall be deposited in the adjacent embankments (unless otherwise directed by the chief engineer). The price for removing and depositing in the embankment shall be included in the price paid for excavation, provided such average haul does not exceed 500 feet; beyond that distance one cent per cubic yard per 100 feet will be allowed and paid for such extra haul for the first 500 feet of overhaul; beyond that one-half ($\frac{1}{2}$) cent per cubic yard for 100 feet shall be allowed until the overhaul reaches twenty cents per cubic yard, after which no greater price shall be paid for overhaul unless it exceeds one mile or a long section of grading. In case there is a surplus of material in excavation it shall be disposed of either for second track or as directed by the chief engineer. The contractor, when desired by the chief engineer, shall deposit, on the side of the road, or at such convenient points as may be designated, any stone or rock that he may excavate; and if, in so doing, he should deposit material required for embankment, the additional cost, if any, of procuring other materials from without the road, will be allowed. All stone or rock excavated and deposited as above, and all materials taken from buildings or other structures on the property of the railroad company, together with all timber removed from the line of the road, will be considered as belonging to the said railroad company, and the contractors upon the respective sections will be responsible for its safe-keeping until removed by said railroad company, or until the work herein contracted for is finished.

Embankments.— 14. Embankments shall be made of such material and built of such slopes, and carried to such height above grade as the chief engineer may direct; stones and heavy material forming the slopes, and the finer material deposited in the center of the embankment. No perishable material will be allowed in embankments.

Embankments approaching masonry.— 15. Embankments about masonry of bridges and culverts shall be built at such times and in such manner as directed by the chief engineer; embankments forty feet high or more shall not be filled in the usual way within fifty feet of the masonry, but shall have

water-tight material if convenient (preferably borrowed) wheeled over masonry and carefully rammed, to such width and height, or puddled if necessary, as the chief engineer may direct, and for this extra work a price fixed by the chief engineer covering the ramming or puddling shall be paid, or its cost allowed the contractor.

Material to save and to waste.—16. All material excavated by the contractor, which is considered desirable to save for other purposes, may, by direction of the chief engineer, be placed in any accessible place above grade, and diverted from the construction of embankments, but no other waste material, where there is an excess, shall approach within one rod of the slopes of the excavation, and must be so deposited as to throw all drainage away from the excavations for the railroad, unless otherwise directed in writing by the chief engineer.

Trestle work.—17. All trestle work shall be built by the contractor to such extent and in accordance with the plans furnished and as directed by the chief engineer. They shall include all wooden structures commonly used for abutments or piers and undercrossings, the timber to be sound and durable of its kind, and will be paid for per 1,000 feet B. M., worked in place; piles per lineal foot, after driving and capping, adding two feet thereto for necessary waste. (See specifications under head of "Foundations.") Iron work per pound worked in place, and these prices to cover the furnishing of all labor and materials necessary to construct and finish the trestle or other structure in place ready for the track.

Public roads.—18. Whenever the route of the railroad is traversed by public or private roads, commodious passing places must be kept open and in safe condition for use; and in passing through farms, the contractor must also keep up such temporary fences as may be necessary for the preservation of the crops, or pay for such destruction as is caused by a neglect of this provision.

MASONRY.

Masonry.—19. Masonry will be estimated and paid for by the cubic yard and is to cover the furnishing of all materials, scaffolding, centering, and all other expenses necessary to its completion, and will be classified as follows, viz.:

Classification.—20. First class masonry, second class masonry, third class masonry, fourth class masonry, brick masonry, rectangular culvert masonry, vertical wall masonry, slope wall masonry, concrete, stone paving, rip rap, Structures may contain any or all of the above-mentioned classes of masonry as directed by the engineer or shown by the plans. All classes of stone work must be laid with the beds parallel to stratification lines or quarry beds.

First class masonry.—21. First class masonry shall consist of rock-range work of the best quality, the face of the stone to be accurately squared, jointed and bedded, and laid in regular horizontal courses, not less than ten inches in thickness, nor exceeding twenty-eight inches in thickness, regularly decreasing from bottom to top of wall; the stretchers shall generally be at least three and one-half feet in length, and not less than sixteen inches bed for a ten-inch course, and not less than twenty-four inches bed for an eighteen-inch course, and not less than thirty-two inches bed for a twenty-eight inch course; the headers shall have on face at least as much width as is required for a bed

for a stretcher, and at least four feet long, and keep this size in the heart of the wall, and be so arranged as to occupy one-fifth of the face of the wall, and be similarly disposed in the back of the wall. When the thickness of the wall will admit of their interlocking, they will be laid in that manner, but when the wall is too thick to admit of that arrangement of headers, they will be connected by a large backing stone laid over them connecting the two opposite headers; bond is not to be less than twelve inches throughout face, back and heart of wall. The stone for the heart of the wall will be of the same thickness as those for the face and back, bedded the same as the face stone, but not jointed, and must be well fitted to their places; any remaining interstices will be filled with small sound stones or chips. The face stones and backing to be set entirely in a good bed of cement mortar and mauled to place, the interstices may be laid dry; then every course is to be thoroughly grouted separately, and finished water-tight, except during winter, when each stone or spawl will be laid in a full bed of mortar and mauled to place at once, under such special stipulations and directions as are given concerning heating of water and sand, thawing and cleaning of stone and covering at night of work laid previous to 3 P. M. (no work allowed to be laid in winter after 3 P. M., unless temperature is above freezing point). The stones forming the points of piers which act as ice-breakers shall be neatly and smoothly dressed on their faces, and be fastened together with iron clamps and to the interior of the pier, if so desired by the chief engineer. The other face stones will, with the exception of the draft, be generally left with the face as they come from the quarry, unless the projections above the draft should exceed two inches, in which case they should be thoroughly scabbled down to that point. The abutments and piers, or such portions of them as the engineer may direct, shall be covered with a course of coping, not less than fourteen inches thick, and not less than three feet wide. Especial care to be taken in preparing beds for coping, under foot shoes of iron bridges, and the necessary dressing after laying for the bridge rests is to be well and finely dressed; all coping to be fastened together and to the lower courses with clamps of iron, without extra charge. Drafts one and a half inches wide on all corners and covers of masonry. This class of masonry to be generally used for piers in streams that are subject to ice flows.

Second class masonry.—22. Second class masonry will generally cover all such masonry as abutments of bridges, unless otherwise directed by the engineer. It will be range work, or in broken courses, as may best suit the stone that is used. Face stones to be accurately jointed and bedded, and no stone to be less than eight inches thick. The stretchers in the face to have beds of at least fifteen inches, and in no case less bed than rise, and to be not less than three feet long, measured in the face of the wall. The bond to be not less than ten inches throughout the face, back, or heart of wall. The headers shall not have less than sixteen inches length of face, and shall extend at least three and one-half feet into the wall. There shall be not less than one header to every six feet of face measured from center to center, and so arranged that a header in a superior course shall be placed between two headers in the course below. The backing stone shall be of large size, and have parallel beds, but the beds are not required to be dressed as in first class masonry. The backing stone shall be laid so as to break joint with one another, and when the thickness

of the wall exceeds three and one-half feet, headers of the same dimensions as those in the face, and in equal number, will be placed in the back of the wall, the face and backing stone to be set full width of bed in cement mortar, the interstices to be laid dry, and each course thoroughly grouted separately and finished water-tight; but if laid in winter, as specified for first class masonry.

Third class masonry.—23. Third class masonry may be used for foundations of all classes of masonry below the neat work or for any work as directed by the chief engineer; it will be rubble work, laid with a good bed of mortar, in irregular courses, and will consist of stone, containing generally six or more cubic feet each, and not less than ten inches in thickness, so disposed as to make firm and compact work; no stone in the work shall contain less than three cubic feet, except for filling up the interstices between the large blocks in the heart of the wall, and shall be laid with bond of not less than ten inches throughout the face, back, and heart of wall. At least one-fifth of the face measurement shall be composed of headers, extending full size four feet into the wall, and from the back the same proportion, and of the same dimensions, so arranged that a header in the back shall be between two headers in the face. The corner stones shall be neatly hammer-dressed so as to have horizontal beds and vertical joints. Also drafts to be cut on all corners and copings of masonry.

Fourth class masonry.—24. Fourth class masonry will be dry rubble work, dressed by the spawling hammer to shape, and laid in irregular courses, or as may best suit the stone used. The stone used shall be of durable quality and of good size and shape, generally not less than seven inches thick and so disposed as to make strong, compact, and durable work. Corner stones shall have parallel beds, and be neatly dressed to shape, headers of good size, extending well through the wall in the proportion of about one-fifth of the face measurements, shall be required on both the front and back of wall, connecting them together by large backing stone in the next course if the wall is wide enough to admit of this being done. It will be used generally for retaining walls.

Arch culvert masonry.—25. Arch culvert masonry can be built of first, second or third class, or of all the three classes combined in one structure, at the discretion of the chief engineer, and as shown by plans; generally all arches under ten feet span will be built of third class masonry, except the arched ring and sheeting, which may be of second class masonry, in which the arch stones shall have a good bearing throughout the thickness of the arch or sheeting, and be well bonded and of full depth; no stone shall be less than five inches in thickness on the intrados of the arch; generally all arches over ten feet span and up to twenty feet span will be built of second and third class masonry combined, the ring and sheeting to be of full size and well dressed to radial lines; generally arches over twenty feet span will have sheeting and ring, parapet and coping of first class masonry, the balance will be of second or third class masonry. They will be coated on the back with one-half inch of cement mortar, mixed one to one, and allowed to set before clay puddle is placed over it. The plan of each structure will usually show the class of work desired for each part of the arch.

Brick masonry.—26. Brick masonry must be laid of all hard-burned brick of the best quality, well tempered and moulded to standard size. No bats, cracked, crooked, swelled or salmon bricks will be used or allowed. The brick

shall be thoroughly saturated with water until each brick absorbs from one-half to three-fourths of a pound of water before being laid, and shall be laid in the best hydraulic cement mortar, with such thickness of joint and style of bond as prescribed by the engineer by plan; grout may be used instead of mortar for the filling of joints and for the keying of arches. Arches of brick must be coated on the back with a coating of strong and water-proof mortar one-half inch in thickness, covering the highest stone, and must be allowed to set hard before any puddling with clay is allowed over it.

Rectangular culverts.—27. Rectangular culvert masonry will be of good dry rubble masonry, neatly laid with square-shaped stones of a size and quality approved by the chief engineer. Five feet of the ends, also the end parapet walls and the covering stone, will be laid in good cement or lime mortar if so directed by the engineer. When they are directed by the chief engineer to be laid entirely in cement mortar, they will be classified as third class masonry, and will conform to specifications of that class, all covering stone to be not less than twelve inches thick, and must have a good solid bearing on the side wall of not less than fifteen inches; under embankments over twenty-five feet in height, the covering stone shall be fourteen inches thick or more, if so desired.

Vertical wall.—28. Vertical wall masonry will be second, third, or fourth class masonry, generally fourth class, except in special cases; it may also be either dry or mortar masonry, as the chief engineer directs.

Slope walls.—29. Slope walls will be dry masonry of such thickness and slope as directed by the chief engineer. The stones must reach entirely through the wall, and must be not less than three inches thick and eighteen inches long, laid with close joints, and as free as possible from spawls. The foundations must be prepared and laid as directed by the engineer.

Stone paving.—30. Stone paving for culverts and other water-courses will be made by setting stone from ten to fifteen inches, or more when so directed, in depth, on edge, with top slightly inclined down stream. It must always be so laid that it will be lowest in center of culverts or water-ways, dipping from the sides at the rate of one inch per foot. About every eight feet in the length of the paving, two stones should lap in the center at least one foot, and extend under the wall of box culverts eighteen inches. It can be laid either dry, or in special cases with strong cement mortar, as may be directed by the chief engineer.

Rip rap.—31. When required by the engineer, the contractor shall protect the face of embankments or the foot of slopes from the action of water, by a facing of rip rap stone, or of brush and stones, or by a slope or retaining wall, as may be directed. The rip rap, when used, to be laid by hand by competent workmen, and to be of such thickness and slope and of such ordinary stone as the engineer may direct; brush to be laid with butts outward in the stream and slightly inclining down stream with the current.

Foundations.—32. Foundations for masonry shall be excavated to such depths as may be necessary to secure a solid bearing for the masonry, of which the said chief engineer shall be the judge; the materials excavated shall be classified and paid for, as provided for in these specifications under the general head of excavations; and in case of foundations in rock, the rock must be excavated to such depth, and in such form as may be desired by the

chief engineer, and must be dressed level to receive the foundation course. All the material taken from the excavations for foundations, if of proper quality, shall be deposited in the contiguous embankment; but any material unfit for such purpose shall be deposited outside the roadway, or in such places as the chief engineer may direct, but so that it shall not interfere with any natural drainage or water-course. When a safe and solid foundation for masonry cannot be found at a reasonable depth (to be judged by the said chief engineer), there shall be prepared by the said contractor such artificial foundations as the chief engineer may direct.

Timber foundations; iron work.— 33. Timber foundations, when required, shall be such as the chief engineer may by drawings or otherwise prescribe, and shall be paid for by the one thousand (1,000) feet, board measure; the price covering cost of material, framing and putting in place. All wrought and cast iron work, ordered by the said chief engineer, shall be paid for by the pound; the price, including cost of material, manufacture, and placing in work.

Piling.— 34. All timber used in foundations or foundation filling shall be of young, sound and thrifty white oak, yellow pine, or other timber equally good for the purpose, acceptable to the chief engineer. Piles must be at least eight (8) inches in diameter at the small end, and at least twelve (12) inches diameter at the butt when sawed off; they must be perfectly straight, and be trimmed close, and have the bark stripped off before they are driven. They must be driven into hard bottom until they do not move more than one-half ($\frac{1}{2}$) inch under the blow of a hammer weighing two thousand (2,000) pounds falling twenty (20) feet at the last blow. They must be driven vertically and at the regular distances apart from centers, transversely and longitudinally, as required by the plans or directions of said chief engineer; they must be cut off squarely at the butt, and be well sharpened to a point; and, when necessary, in the opinion of the said chief engineer, shall be shod with iron and the heads bound with iron hoops, of such dimensions as he may direct, which shall be paid for the same as other iron work used in foundations. The necessary length of piles may be ascertained by driving test piles or boring in different parts of the localities in which they are to be used; and in case a pile shall not prove long enough to reach hard bottom, it shall be sawed off square, and a hole two (2) inches in diameter be bored in its head twelve (12) inches deep; into this hole a circular white oak tree-nail twenty-three (23) inches in length shall be well driven, and another pile similarly squared and bored, and of as large a diameter at the small end as can be procured, shall be placed upon the lower pile, and brought to its proper position and driven as before directed. All piles, when thus driven to the required depth, are to be cut off truly square and horizontal at the proper height, given by the said chief engineer, and only the number of lineal feet of the piles, plus two feet for waste after being sawed off, shall be paid for.

Coffer dams.— 35. Where coffer dams are, in the opinion of the chief engineer, required for foundations, the prices provided in the contract for timber, piles, and iron in foundations, shall be allowed for the material and work on same, which are understood as covering all risks from high water or otherwise, draining, bailing, pumping, and all materials connected with the coffer dams. Sheet piling shall be classed as plank in the foundations, and

shall be paid for by the one thousand (1,000) feet board measure, if left in the ground.

Only the actual number of feet, B. M., timber and plank used and left for use in the foundations will be paid for.

Stone.—36. Stone for the different classes of masonry must be procured by the contractor, of strong, sound, and durable quality, such as weather will not affect injuriously, and must be approved by the chief engineer.

Sand.—37. Sand must be of good quality, clean and sharp, free from root-lets, loam, or clay, and must be sieved free from all particles that will not pass through a one-eighth inch mesh wire screen.

Cement.—38. Cement must be of the best quality of well-burned, finely-ground, improved quality of seasoned hydraulic cement; it shall be ninety per cent. fine with a sieve of 2,500 meshes to the square inch; it must set in the shade covered by a damp cloth from a plastic paste one-half inch thick by two inches square, in not less than fifteen minutes nor over thirty minutes, so as to stand a weight of four ounces on a wire one-twelfth of an inch in diameter, and not disintegrate on immersion in water; it must stand the following strains per square inch of section: Fifty pounds at the end of twenty-four hours in water, and one hundred and twenty pounds at the end of one week in water. Any cement swelling or showing cracks or fissures after immersion in water is condemned as unfit for use, even though it stands the above tests. As mortar (in the proportion of one part of cement and two parts of sand), it should set in from thirty minutes to one hour, then be immersed in water, show a tensile strength per square inch of section as follows: in twenty-four hours, of at least twenty pounds; in one week, of forty pounds; in one month, of seventy pounds, and in three months, of one hundred and fifty pounds.

Mortar.—39. Cement mortar shall be made of one part in bulk of cement, and two parts in bulk of clean, sharp sand, well and thoroughly mixed together dry, and the water added in proper proportion as mortar is required for use, and used inside of one-half hour after water is added, ten per cent. of fresh cement to be added after each half hour remaining unused, but no mortar left over night to be used under any pretext.

Grout.—40. Grout will be made in like manner to mortar, as to sand and cement, and the water added in greater quantity, and shall be used to the extent as desired by the chief engineer; it shall set, covered by water, in a vessel, in forty-eight hours, so as to stand the wire test for pure cement.

Lime mortar.—41. Lime mortar, if desired by the chief engineer, shall be made of two parts of the best quick-lime, one part of cement, and five parts sand. The ordinary mortar of lime and sand being first properly made and the cement mixed thoroughly with it immediately before using.

Concrete.—42. Concrete mortar shall be mixed as per directions for cement mortar, and the clean broken stone, passing through a two-inch ring, added after being thoroughly wet, in the proportion of four times the bulk of cement used; mixing so thoroughly that each stone is coated with the mortar; then quickly laid in sections and layers not exceeding nine inches in thickness and thoroughly rammed until mortar flushes to the surface; it shall be allowed twelve hours set before any work is laid on it. Concrete may be substituted for masonry in foundations, in backing or filling of walls, and in arch culverts when ordered by the chief engineer.

Additional cement.— 43. The above proportions for mortar, grout, and concrete are intended to form a preparation in which every particle of sand will be enveloped in cement, and this result must be attained to the satisfaction of the inspector and engineer, or a proportion of cement added to accomplish this end.

Pointing joints.— 44. The joints of all classes of masonry shall be neatly pointed with Portland cement mortar, mixed one part cement to one and one-half parts sand. It must not be allowed to dry in less than one week in the hottest and driest weather.

Inspection.— 45. No masonry must be covered up until it has been inspected by the chief engineer. No masonry will be laid in freezing weather or in winter, without special permission, and then as provided for under the head of first class masonry; and shall at all times be subject to the supervision of an inspector, whose duties shall be to see that the requirements of these specifications are conformed to; but his presence is in no way to lessen in any degree the responsibility of the contractor to his obligation. The inspector is specially to see that all mortar work in dry weather is kept wet throughout by sprinkling where masonry is being laid, and until it has been laid at least one week.

CONDITIONS APPLICABLE TO GRADATION AND MASONRY.

Risks.— 46. The prices agreed upon and paid per yard for each kind of work shall include all expenses attending the delivery of materials, and incident to the prosecution of the work, and cover all risks and damage from floods or casualties of any kind.

Claims for extra work.— 47. No claim for extra work shall be allowed unless the same shall have been done in pursuance of a written order from the engineer, and the claim be presented at the first settlement after the work was executed, unless the chief engineer, at his discretion, should direct the claim, or such part as he may deem just and equitable, to be allowed.

Examination by contractor.— 48. Contractors must satisfy themselves of the nature and location of the work they bid for, of the general form of the surface of the ground, of the quantity of materials required for forming the embankment or other work, and all other matters which can in any way influence their contract, and no information upon any such matters derived from the maps, plans, profiles, drawings or specifications, or from the engineer or his assistants, will in any way relieve the contractor from all risks or from fulfilling all the terms of this contract.

Prosecution of work.— 49. The whole of the work shall be prosecuted in the most energetic, expeditious, and workmanlike manner, with the largest force of all classes of workmen that can be worked to advantage and secure expedition.

Changes in alignment.— 50. The company shall have the right to make any alterations that may be hereafter determined upon as necessary or desirable in the location, line, grade, plan, form, or dimensions of the work, either before or after the commencement of work by the contractor, defining them in writing; by or without drawing; and in case such alterations increase the quantities, the contractor shall be paid for such excess at the contract rates herein specified; but should such alterations diminish the quantity

or extent of the work to be done, it shall not, under any circumstances, be construed as constituting, and shall not constitute, a claim for damages, nor shall any claim be made on the work that may be altered or dispensed with; but no claim for an increase in prices of excavation or embankment on the part of the contractor will be allowed or considered unless presented in writing to the chief engineer before the work on that part of the section where the alteration has been made, shall have been commenced. The length of any section may be increased or diminished at any time, for the purpose of equalizing and balancing the excavation and embankment.

Negligence.—51. All slips or falls of slopes attributable to excessive use of powder, or negligence or carelessness of contractor, in the opinion of the chief engineer, shall be removed by the contractor at his own cost; but if not so attributable, an allowance as common excavation shall be made for such removal, or be fixed by the chief engineer.

The contractor will be held responsible for all damages that may be done to persons, or property, or premises through which the line of road may pass, in consequence of leaving gates or fences open, and for all trespassing or depredations on fences or other property by workmen in his employ, or by blasting rocks or building fires, and estimates may be withheld, at the option of the engineer, until damages of this description are satisfactorily settled for.

Subcontracts.—52. Contractors will be required to give their personal attention and supervision to the work, and will not be allowed to subcontract the whole or any part of same, without the consent of the railway company having been given in writing thereto.

Permission to haul.—53. Any person having permission from the engineer, shall be allowed to pass along or haul any materials required for the road or any section, such persons not interfering or impeding the work of the contractor.

Quantities on profile, etc.—54. The quantities exhibited to the contractor at the time of soliciting proposals for the work herein contracted for, or on profiles, etc., are necessarily only approximate; they furnish only general information, and will in no way govern or affect the final estimate, which will be made out on the completion of the work from actual measurements and established facts not determinable at time of letting the work.

Meaning of engineer.—55. Whenever the word engineer or chief engineer is used in these specifications, it is to be understood as applying to the engineer in chief of the company, or in his absence, his duly appointed assistant engineers and inspectors representing him, limited by the special duties intrusted to them.

Facilities for inspectors.—56. The contractor shall furnish the inspectors with proper facilities for access to the inspection of all work; for the weighing and testing of cement, sand, and other material used on the work.

Least quantity of cement.—57. Cement masonry will average at least six-tenths (6-10) of a barrel of cement per cubic yard of masonry.

Measurements of work.—58. All work and material will be paid for as measured by the engineer and his assistants, according to plans and the working lines given, and these specifications.

Delays and hindrances.—59. No charge shall be made by the contractor for hindrances or delays, from any cause, during the progress of work; but

it may entitle him to an extension of time allowed for completing the work, sufficient to compensate for the detention, to be determined by the chief engineer, provided the contractor shall give the engineer in charge immediate notice in writing of the cause of the detention.

Suspension of work.—60. The railroad company reserves the right to suspend operations at any particular points, and in the event of such right being exercised so as to cause delay to the contractor, then an extension of time equal to such delay or detention shall be allowed him to complete his contract, but any such delay shall not entitle the contractor to any claim for damages. The railroad company shall not suspend operations without giving the contractor at least ten days' notice of their intention to suspend.

Work night and day.—61. The work shall be carried on night and day, in order to complete within the specified time, if so directed by the chief engineer.

Excavations for extra tracks, etc.—62. Where excavations are being made for additional tracks, the party of the first part must at all times keep the work in such condition as not to interfere with the passage of trains, and the said party will be held responsible for any delays or damages done to the existing railroad tracks. Contractors will not be permitted to transport material by carts or wheel-barrow along or between tracks under any circumstances. Said party must also provide the necessary watchmen, if instructed to do so by the chief engineer.

Crossings during work.—63. When it is necessary for the party of the first part to transport material from one side of the railroad to the other, the said party of the first part shall furnish the lumber and spikes for the crossings required; and all labor placing down the same will be performed by the employees of the party of the second part, the actual cost of which shall be paid by the said party of the first part. No crossing shall be placed down, except by direction of the chief engineer.

Transportation of workmen and materials.—64. The said party of the second part will not transport free any of the workmen or materials for this work, but all material must be shipped in the name of the party of the first part, and in no case shall it be shipped in care of, or in the name of the railroad company or any of its officers or employees, and said party of first part must pay the regular freight rates arranged for with the freight department.

BRIDGING.

The superstructure of the public road and farm bridges to be built in a thorough and workmanlike manner, according to such plans, specifications, and bills of timber and iron as will be furnished from time to time by the engineer.

[The details of bridges over particular places are given in each contract.]

SPECIFICATIONS FOR IRON WORK.

Quality of Material.

All wrought iron must be tough, fibrous, uniform in quality throughout, free from flaws, blisters, and injurious cracks, and must have a workmanlike finish. It must be capable of sustaining an ultimate stress of 46,000 pounds

per square inch on a full section of test piece, with an elastic limit of 23,000 pounds per square inch.

All iron to be used in tension or subjected to transverse stress (except web-plates), must have a minimum stretch, on a length of eight inches, of fifteen per cent. measured after breaking.

All iron to be used in compression and for web-plates, of width not exceeding twenty-four inches, must have a minimum stretch of ten per cent. on a length of eight inches measured after breaking.

All iron for web-plates exceeding twenty-four inches in width, must have a minimum stretch of five per cent. measured in length of eight inches.

All iron to be used in the tensile members of open trusses, laterals, pins, bolts, etc., must be double rolled after and directly from the muck bar (no scrap will be allowed), and must be capable of sustaining an ultimate stress of 50,000 pounds per square inch on a full section of test piece, with an elastic limit of 25,000 pounds per square inch, and a minimum stretch of twenty per cent. measured after breaking in length of eight inches.

When tested to the breaking, if so required by the engineer, the bars and rods must part through the body and not through the head or pin hole. Such tests must be at the expense of the contractor when the requirements of these specifications are not complied with.

All tension wrought iron, if cut into testing strips one and one-half inches in width, must be capable of resisting, without signs of fracture, bending cold by blows of a hammer, until the ends of the strips form a right angle with each other, the inner diameter of the curve of bending being not more than twice the thickness of the piece tested. The hammering must be only on the extremities of the specimens, and never where the flexion is taking place. The bending must stop when the first crack appears.

All the tension tests are to be made on a standard test piece, of one and one-half inches in width, and from one-fourth to three-fourths inches in thickness, planed down on both edges equally, so as to reduce the width to one inch for length of eight inches. Whenever practicable, the two flat sides of the piece to be left as they come from the rolls. In all other cases *both* sides of the test pieces are to be planed off.

All plates, angles, etc., which are to be bent in the manufacture, must, in addition to the above requirements, be capable of bending sharply to a right angle, at a working heat, without showing any signs of fracture.

All rivet iron must be tough and soft, and pieces of the full diameter of the rivet must be capable of bending until the sides are in close contact, without showing fracture on the convex side of the curve.

Pins of four and a half inches diameter or less, may be rolled iron, but those of greater diameter must be forged.

Workmanship.

All workmanship must be first class; all abutting surfaces, except flanges of plate girders, must be planed or turned, so as to insure even bearings, taking light cuts so as not to injure the end fibres of the piece, and must be protected by white lead and tallow. Abutting members must be brought into close and forcible contact when fitted with splice-plates, and the rivet holes

reamed in position before leaving the work; the plates being marked so as to go in the same position in erecting.

Generally the use of bolts instead of rivets will not be permitted, unless they are turned conical and the holes reamed to fit them.

Rollers must be turned and roller-beds planed.

Rivet holes must be carefully spaced and punched, and must in all cases be reamed to fit where they do not come truly and accurately opposite, without the aid of drift pins. Rivets must completely fill the holes and have full heads, and be countersunk when so required, and machine-driven wherever possible.

Compression members must be straight and free from kinks or buckles in the finished piece.

All pin holes in pieces which are not adjustable for length must be accurately bored at right angles to the axis, unless otherwise shown in the drawings, and no variation of more than one-sixty-fourth of an inch will be allowed in the length between centers of pin holes. Eye bars must be perfectly straight before boring, the holes must be in the center of the head, and on the center lines of the bar. Whenever links are to be packed more than one-eighth of an inch to the foot of their length out of parallel with the axis of the structure, they must be bent with a gentle curve until the heads stand at right angles to the pin in their intended position, before being bored; suitable blocking pieces being used to keep them in proper position during the operation of boring. All pieces must be at equal temperatures when bored, and those belonging to the same panel, when placed in a pile, must allow the pin at each end to pass through at the same time without forcing. Pins must be carefully turned, perfectly finished and straight, and when driven in, must have pilot nut to preserve threads. No variation of more than one-thirty-second of an inch will be allowed between diameter of pin and pin hole. In the case of bolts, a variation of one-sixteenth of an inch will be allowed between diameter of bolt and hole. Thickening washers must be used whenever required to make the joints snug and tight.

All iron must receive one coat of boiled linseed oil, and inaccessible surfaces are to be painted with one heavy coat of red-oxide of iron in pure linseed oil, before leaving the works. All scale to be scraped from the iron before painting.

The whole of the construction to be first-class work, and in strict accordance with the drawings and these specifications. In the case of subcontractors, the specifications are fully binding on them in every respect, and free access and information is to be given by them for thorough inspection of material and workmanship, and all required test pieces, etc., properly shaped, are to be provided, as may be requested, without charge. All shipments of material not properly inspected and passed are at the risk of the contractor.

In all cases figures are to be taken in preference to any measurements by scale, and no alterations are to be made unless authorized in writing by the chief engineer.

SPECIFICATIONS FOR TRACK-LAYING.

Ties.—The ties shall be spaced so as to give fourteen ties to each thirty feet rail. They shall be laid accurately to the stakes as given by the engineer in charge, and carefully mauled into the ballast to such depths as the en-

gineer may direct, and in such a manner as to give them a firm, continuous, and even bearing thereon. They must be properly and evenly spaced, with ten inches between the edges of bearing surfaces at joints, with intermediate ties evenly spaced, and the ends on the outside on double track, and on the right-hand side going north or west on single track, lined up parallel with the rails. The ties must not be notched under any circumstances, but should they be twisted, must be made true with the adze, that the rails may have an even bearing over the whole breadth of the tie.

Rails.—The rails shall be accurately laid to the line and level stakes given by the engineer or his assistants, and on all curves they must be bent to the proper curvature before being laid upon the ties; they shall be laid to a gauge of four feet eight and one-half inches. On straight lines the rails must be on the same level, and on curves the proper elevation must be given to the outer rail and carried uniformly around the curve. This elevation should be commenced from fifty to two hundred feet back of the point of curvature, depending on the degree of the curve, and increased uniformly to the latter point, where the full elevation is attained. The same method should be adopted in leaving the curve. The rails must be spiked both on the inside and outside on each tie, on straight lines as well as on curves, and the spikes driven in such position as to keep the ties at right angles to the rails.

Joints.—The joints of the rails must be exactly midway between the joint ties, and the joint on one line of rail must be opposite the center of the rail on the other line of the same track. In winter a distance of five-sixteenths of an inch, and in summer one-sixteenth of an inch, must be left between the ends of the rails, to allow for expansion. The splices must be properly put on with the full number of bolts, nuts and nut-locks, and the nuts screwed up tight.

Ballast.—There must be a uniform depth of at least inches of clean, broken stone or gravel under the ties. The ballast must be filled up evenly between but not above the top of the ties, and also between the main tracks and sidings where stone ballast is used. In filling up between the tracks, coarse, large stones must be placed in the bottom, in order to provide for drainage; but care should be taken to keep the coarse stone away from the ends of the ties. At the outer ends of the ties the ballast must be sloped off evenly to the subgrade. When stone is used, it must be of an imperishable quality, broken evenly and not larger than a cube that will pass through a two and one-half inch ring.

Switches.—In laying switches and frogs, care shall be taken to place them accurately to the position determined by the engineer. They must be laid upon ties specially provided for the purpose, which shall be so laid as to have a firm and continuous bearing upon the ballast. Particular attention should be given to have them well lined up and to avoid low joints at the head-blocks of switches. The standard distance between flange edges of guard-rail and frog must be four feet and five inches.

Road crossings.—Road-crossing planks must be securely spiked; the plank-ing should be three-quarters of an inch below the top of rail, and on the inside two and one-half inches from the gauge-line. The ends of planks should be beveled off.

Sidings.—Sidings shall be laid at such points and of such lengths as the engineer may direct.

Ditches and drains.—All material that shall have been thrown into the ditches by the party of the first part shall be removed, and the road properly ditched and cleaned up. All necessary cross-drains must be laid at proper intervals.

General conditions.—The party of the first part shall maintain and keep the track in good repair until the same is accepted, and no length of track shall be accepted and taken off the hands of the party of the first part, except at the option of the engineer, until the whole shall have been completed.

And the party of the second part doth covenant and agree to deliver all rails, splice bars, bolts, spikes, ties, and other material that may be required for the said track at the nearest accessible point on the main line to where the track-laying is in progress.

And the party of the first part doth further agree to unload from the cars all material that may be required for said track; said unloading to be done promptly by the party of the first part, and at his own expense. The party of the second part to furnish engine and cars for hauling ballast and track material from the point of delivery to the point where used. All extra work that may be required to complete the track ready for the running of trains shall be done by the party of the first part if required by the engineer, and be paid for by the party of the second part at the valuation of said engineer, and no claims for extra work will be allowed unless the work was done under written orders of the engineer, presented on or before the first day of the month next after such work was done. No extra allowance will be made for any delays that may occur in the construction of the work, but it may entitle the party of the first part to an extension of time for completing the work sufficient to compensate for the detention, to be determined by the engineer.

And the said party of the second part doth promise and agree to pay to the said party of the first part for the work to be done under this contract the following prices, to wit:—

On or about the last day of each month, during the progress of this work, an estimate shall be made of the relative value of the work done, to be judged of by the engineer; and ninety per cent. of the amount of said estimate shall be paid to the party of the first part on or about the fifteenth day of the following month. And when all the work embraced in this contract is completed, agreeably to the specifications, and in accordance with the directions and to the satisfaction and acceptance of the engineer, there shall be a final estimate made of the quality, character, and value of said work, according to the terms of this agreement, when the balance appearing due to the said party of the first part, shall be paid to within thirty days thereafter, upon his giving a release, under seal, to the party of the second part, from all claims or demands whatsoever growing in any manner out of this agreement, and upon his procuring and delivering to the party of the second part, full releases, in proper form and duly executed, from mechanics and materialmen, of all liens, claims, and demands for materials furnished and provided, and work and labor done and performed upon or about the work herein contracted for under this contract.

It is further covenanted and agreed between the said parties, that the said party of the first part shall not sublet or transfer this contract, or any part thereof, to any person (excepting for the delivery of materials), without the

written consent of the engineer, but will at all times give personal attention and superintendence to the work.

It is further agreed and understood that the work embraced in this contract shall be commenced within ten days from this date, and prosecuted with such force as the engineer shall deem adequate to its completion within the time specified; and if at any time the said party of the first part shall refuse or neglect to prosecute the work with a force sufficient, in the opinion of the said engineer, for its completion within the time specified in this agreement, then, and in that case, the said engineer in charge, or such other agent as the engineer shall designate, may proceed to employ such a number of workmen, laborers, and overseers as may, in the opinion of the said engineer, be necessary to insure the completion of the work within the time hereinbefore limited, at such wages as he may find necessary or expedient to give; pay all persons so employed; and charge over the amount so paid to the party of the first part as for so much money paid to him on this contract; or for the failure to prosecute the work with an adequate force, for noncompliance with his directions in regard to the manner of constructing it, or for any other omission or neglect of the requirements of this agreement and specifications on the part of the party of the first part, the said engineer may, at his discretion, declare this contract, or any portion or section embraced in it, forfeited; which declaration and forfeiture shall exonerate the said company from any and all obligations and liabilities arising under this contract the same as if this agreement had never been made; and the reserved percentage of ten per cent. upon any work done by the party of the first part may be retained forever by the said company.

And the said party of the first part hath further covenanted and agreed to take, use, provide, and make all proper, necessary, and sufficient precautions, safeguards, and protections against the occurrence or happening of any accidents, injuries, damages, or hurt to any person or property during the progress of the construction of the work herein contracted for, and to be responsible for, and to indemnify and save harmless the said party of the second part, and the said engineer, from the payment of all sums of money by reason of all or any such accidents, injuries, damages, or hurt that may happen or occur upon or about said work, and from all fines, penalties, and loss incurred for or by reason of the violation of any city or borough ordinance or regulation, or law of the state, while the said work is in progress of construction.

Right of way.— It is mutually agreed, that the said company shall furnish the right of way on the line of said railroad; but no claims for damages arising from delay that may, in any case, occur, in obtaining title or possession, shall be made by said contractor. But if possession shall not be obtained within three months from the date of this contract, then the said contractor may give notice in writing of such detention, and shall be allowed for the completion of the portion of the work so delayed additional time equal to the period between such notice and the time possession shall be acquired.

Order of work.— It is agreed that this contract shall be prosecuted in such order, and at such places and parts of the work, and at such times and seasons, as the said engineer may direct.

Further work.— It is further agreed, that if any work is found necessary, of a character not contemplated or provided for in this contract, that the railroad company shall have the right to let the same in a separate contract, pro-

vided the prices for doing such work cannot be agreed upon between the said engineer and the said contractors.

Use of locomotive and cars.—It is also understood and agreed, that the railroad company are to furnish the use of a locomotive engine and gravel cars for ballasting the roadbed and filling the track—the said contractor paying all expenses connected therewith.

Alterations.—And the said contractor hereby agrees that he will perform the work under this contract as before specified; but any alterations in the form, dimensions, or materials of said work, which may be directed in writing by said engineer, shall be made by said contractors as directed; and if the work shall be rendered thereby more expensive, they shall be entitled to such extra compensation as said engineer shall estimate to be just and reasonable; and if such alteration shall make the work less expensive, then a deduction shall be made, as said engineer may estimate to be just and equitable.

Dismissal of disorderly persons, etc.—To avoid disputes and interruptions, and hindrances to the regular and peaceable progress of the different parts of the work, and to prevent unnecessary injury to the rights, property, and persons of residents in the vicinity, or of persons traveling on or near the line of the company, said engineer shall have power to dismiss from the service of the said party of the first part, every quarrelsome, disorderly person, and such as shall be addicted to habits of intemperance; and the said party of the first part shall not employ any person who has been so dismissed from the service of any other contractor; and furthermore, the said party of the first part shall not sell or furnish spirituous liquors, either to persons in his employ, or to any other person or persons on or near the line of said road. This provision is understood as prohibiting entirely the use of ardent spirits as above, and its infringement will subject the said party of the first part to the dismissal and forfeiture of his contract.

And it is mutually agreed and distinctly understood that the decision of the chief engineer shall be final and conclusive in any dispute which may arise between the parties to this agreement, relative to or touching the same, and each and every of said parties do hereby waive any right of action, suit or suits, or other remedy in law or otherwise, by virtue of said covenants, so that the decision of said engineer shall, in the nature of an award, be final and conclusive on the rights and claims of said parties.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, and the party of the second part has caused these presents to be signed in its name by its president and its corporate seal to be hereunto affixed, attested by its secretary, the day and year first above written.

PROPOSAL

For the gradation and masonry on the rail :

The undersigned hereby certif that he ha sufficiently examined the locality and section of the rail , on which the work proposed for below is situated; and that he ha also carefully examined the specifications, terms, and conditions applicable to said work, set forth in the printed form on the same sheet with these proposals; and having made such examinations and understanding thoroughly the nature and conditions of the work to be let, the undersigned hereby propose to the rail company, to do all the work on either or all of the , to which prices are affixed in the fol-

lowing schedule, according to the specifications, terms, and conditions afore-said; and on the acceptance of these proposals for all or either of the named therein, do hereby bind , to enter into and execute a contract according to the requirements aforesaid, for all the work thereon, at the following prices, viz.:

| NAME, NUMBER OR LOCALITY OF | Section | | Section | | Section | | Section | |
|---|---------|-------|---------|-------|---------|-------|---------|-------|
| | Dolls. | Cts. | Dolls. | Cts. | Dolls. | Cts. | Dolls. | Cts. |
| Grading: | | | | | | | | |
| 1. Clearingper Acre | | | | | | | | |
| 2. Grubbing | | | | | | | | |
| 3. Solid rock excavationper Cubic Yard | | | | | | | | |
| 4. Loose rock | | | | | | | | |
| 5. Hard pan | | | | | | | | |
| 6. Earth | | | | | | | | |
| 7. Borrowed embankment | | | | | | | | |
| Foundation excavation in water: | | | | | | | | |
| 8. Solid rock excavationper Cubic Yard | | | | | | | | |
| 9. Loose rock | | | | | | | | |
| 10. Hard pan | | | | | | | | |
| 11. Earth | | | | | | | | |
| Masonry: | | | | | | | | |
| 12. First class masonryper Cubic Yard | | | | | | | | |
| 13. Second class masonry | | | | | | | | |
| 14. Third class masonry | | | | | | | | |
| 15. Fourth class masonry | | | | | | | | |
| Arch culvert masonry: | | | | | | | | |
| 16. First class masonryper Cubic Yard | | | | | | | | |
| 17. Second class masonry | | | | | | | | |
| 18. Third class masonry | | | | | | | | |
| 19. Rectangular culvert masonry | | | | | | | | |
| 20. Slope wall masonry | | | | | | | | |
| 21. Brick work | | | | | | | | |
| 22. Concrete | | | | | | | | |
| Stone paving: | | | | | | | | |
| 23. Laid dryper Cubic Yard | | | | | | | | |
| 24. Laid in cement | | | | | | | | |
| 25. Rip rap | | | | | | | | |
| Timber in trestles and foundations: | | | | | | | | |
| 26. Oakper M. Squared | | | | | | | | |
| 27. White or yellow pine Squared | | | | | | | | |
| Flatted | | | | | | | | |
| 28. Pitch pine Squared | | | | | | | | |
| Flatted | | | | | | | | |
| 29. Spruce Squared | | | | | | | | |
| Flatted | | | | | | | | |
| 30. Hemlock Squared | | | | | | | | |
| Flatted | | | | | | | | |
| Piles: | | | | | | | | |
| 31. Oakper Lineal Foot | | | | | | | | |
| 32. Yellow pine | | | | | | | | |
| 33. Spruce | | | | | | | | |
| 34. Hemlock | | | | | | | | |
| 35. Wrought iron, per pound | | | | | | | | |
| 36. Cast iron, per pound | | | | | | | | |

The undersigned further propose to commence work on such , or as may be allotted to , within days from the date hereof, and to complete , on or before the day of , .
Signed this day of , .

[Proposer's residence.]

[Nearest post-office.]

679. Agreement for Construction of a Locomotive Engine.

THIS AGREEMENT, made this day of , , between the Locomotive Works, of , party of the first part, and the Railroad Company, a corporation duly organized and existing under the laws of the state of , party of the second part.

WITNESSETH, that for and in consideration of the sum of one dollar, and of the other sums to be paid, as hereinafter provided, the party of the first part agrees to build for the party of the second part, one locomotive engine and tender, in all respects according to the specifications hereunto annexed and marked A, and to deliver the said locomotive engine and tender on the tracks of the said party of the second part, at , on or before the day of , for the sum of dollars [*if not payable in cash, state the exact terms in which payment is to be made*].

And the said party of the second part agrees to receive the said locomotive engine and tender when delivered as aforesaid, and to pay therefor the said sum of dollars [*if not payable in cash, state the exact terms in which payment is to be made*].

IN WITNESS WHEREOF, the said parties hereto have caused these presents to be respectively signed in their names by their presidents, and their respective corporate seals to be hereunto affixed, attested by their secretaries, the day and year first above written.

NOTE.—Printed specifications giving the most minute particulars for the construction of locomotives and all kinds of railway cars are prepared and issued by the leading companies manufacturing railway rolling stock. A copy of such specifications should be annexed to any contract for the construction of any locomotives or cars.

680. Contract for the Construction of a Steamship.

THIS AGREEMENT, made this day of , one thousand nine hundred and , between A. B. and C. D. [doing business in the city of , under the firm name of B. & Co.], shipbuilders, of the first part, and W. X., of , and Y. Z., of , of the second part,

WITNESSETH, that the parties of the first part, in consideration of the agreements herein made by the parties of the second part, agree, with the parties of the second part,*

I. That they will construct, build, and complete, for the said parties of the second part, a steamship of the dimensions and materials mentioned in the specification hereunto annexed, and in all particulars conforming to the said specification and to the directions which may be given by the superintendent of such building herein named, for the sum or price of dollars, to be paid therefor as hereinafter mentioned; the said steamship to be launched on or before the day of next, and so soon as launched to be placed at the disposal and under the direction of the said superintendent, at , for the purpose of receiving her engines and machinery, and thereafter to be fully completed as soon as the said superintendent shall require.

II. That they will furnish all the materials for the said steamship according to the said specification, excepting only such as by the express terms of the said specification are to be furnished by the owners [the parties of the second part], the whole to be built and constructed of materials of the best quality, and in the best and most workmanlike manner; and, in every par-

ticular which is not specifically named and provided for in the said annexed specification, the said steamship shall be built and constructed of such materials, and in such proportions of each, and in such manner, in every respect, as the said superintendent may direct.

III. The parties of the second part, upon condition of the true and faithful performance of all things herein agreed by the parties of the first part to be done and performed, do hereby agree to pay to the said parties of the first part, for the building of the said steamship, the said sum of dollars by installments, as the materials therefor are delivered and the work progresses; the first payment to be made when the keel is laid, and the other payments at the end of every month successively thereafter, and the amount of such payments respectively to be in the same proportion to the whole amount to be paid, which the work done and materials delivered shall bear to the whole work and materials required for the full performance of this agreement by the parties of the first part.

IV. And it is hereby mutually agreed, that the above-named W. X. shall have the superintendence and direction of the building and construction of the said steamship, as the superintendent herein above and in the said specification named.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their respective hands and seals the day and year first above written.

681. Contract for the Construction of Engines for a Steamship.

*[As in the preceding form to the *, continuing thus:]*

I. That they will furnish all the materials for, and will construct, build and complete, finish, set up, secure and perfect in all their parts, and with all their appurtenances ready for sea, for the said parties of the second part, two side-lever low-pressure steam marine engines, with four boilers of the dimensions, materials, and workmanship mentioned in the specification hereto annexed, and in all particulars conforming to the said specification and to the directions which may be given by the superintendent of such construction in the said specification named, and with all the tools, fixtures, and appurtenances therein mentioned or referred to, or to the same properly belonging or appertaining.

II. That said engines and boilers, with all their said tools, fixtures, and appurtenances, shall be put up, secured, and fully completed in readiness for sea, on board of a steamship now building for the parties of the second part, by Messrs. M. N. & Co., of the city of , and shall be, in every respect, ready for use on or before the day of , one thousand nine hundred and

III. That all of the materials for the said engines and boilers, with the tools, fixtures, and appurtenances, shall be furnished by them of the description in all respects conforming to the said specification, and of the best quality; and that the whole shall be built, constructed, put up, secured, and fully completed in the most workmanlike manner.

IV. That in every particular which is not specifically named and provided for in the said hereto annexed specification, the said engines, boilers, tools, fixtures, and appurtenances shall be built, constructed, put up, secured, and fully completed of such materials, and in such manner in every respect, as the said superintendent may direct.

V. That they will progress with the said work with such rapidity as shall, in the judgment of _____, the engineer mentioned in the said specification, be sufficient to insure the completion thereof by the times above appointed.

VI. And the said parties hereto of the second part, upon condition of the true and faithful performance of all things herein agreed by the parties of the first part to be done and performed, do hereby agree to pay to the said parties of the first part therefor, the sum of _____ dollars, by installments, as follows — to wit: _____ dollars [part thereof] is paid simultaneously with the execution of these presents, and the receipt thereof is hereby acknowledged by the parties of the first part; _____ dollars is to be paid on the _____ day of _____ next [etc., etc.]; and the residue of _____ dollars so soon as the said steamship is in all respects fully completed, and the said engines, boilers, fixtures, and appurtenances proved, by a satisfactory trial, to be constructed, built, put in, secured, and completed in all respects according to the provisions of this agreement and the said specification.

VII. And the said parties of the second part, in like manner, further agree to pay the patentee or owner of the patent for the privilege of using which-ever cut-off, mentioned in the said specification, the superintendent may direct to be used on the said ship.

VIII. And the said parties of the second part, in like manner, further agree to pay to the parties of the first part, when the ship is completed as aforesaid, for the sheet-iron work in the coal-bunkers and the coal-scuttles to the same, after the rate of _____ cents per pound, of finished work; and for cast-iron work to the same, _____ per pound, of finished work.

IN WITNESS [etc., as in Form 680].

682. Contract for the Right to Manufacture a Patented Article Paying a Tariff to the Patentee.

THIS AGREEMENT, made this _____ day of _____, between A. B., of _____, patentee, of the one part, and Y. Z., of _____, manufacturer, of the other part, WITNESSETH:

WHEREAS, A. B. is proprietor of an invention for [here describe it], and of letters-patent issued therefor by the United States of America, bearing date the _____ day of _____; and,

WHEREAS, the said A. B., for the considerations hereinafter contained, has agreed with the said Y. Z. to license and authorize the said Y. Z., his executors, administrators, and assigns, to make and vend the patented articles specified in the said patent, during the continuance of the said patent, or any renewal thereof, in manner hereinafter particularly specified: Now, in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter entered into on the part of the said Y. Z., and in consideration of _____ dollars paid to the said A. B. by the said Y. Z., the receipt whereof is acknowledged, the said A. B. doth hereby give and grant unto the said Y. Z., his executors, administrators, and assigns, during all the residue of the term of _____, by the said letters-patent granted, and yet unexpired [and also during all such future term or terms, as may be hereafter granted, by way of any new patent, or any reissue or renewal of the now subsisting patent or otherwise], full and free liberty, license, power, and authority to make, vend, or sell, either wholesale or retail, within [here specify the limits], the said invented and patented articles, and to receive to

his and their own use all profits and advantages which shall or can be made by the making and selling of the said patented articles within the said limits, and that without any let, suit, trouble, or hindrance of, from, or by him, the said A. B., his executors or administrators, or any other person or persons claiming to hold and use such invention as aforesaid, from, by, under, or in trust for him or them, by virtue of the said letters-patent, or otherwise.

And the said A. B., for himself, his executors, administrators, and assigns, hereby covenants with the said Y. Z., his executors, administrators, and assigns, that he, the said A. B., his executors, administrators, or assigns, will not at any time during the residue of the said term, or any such future term, grant any license to any other person to make or vend the said articles within the aforesaid limits, without the special license and consent of the said Y. Z., his executors, administrators, or assigns, in writing, under their hands, first had and obtained.

AND IT IS FURTHER AGREED between the said parties, that in case any person shall infringe the said letters-patent [within the said limits], the said Y. Z., his executors, administrators, and assigns, may at his or their option, in the name of the said A. B., his executors, administrators, and assigns, and for his and their benefit, commence, sue, and prosecute all such suits or actions as shall be judged expedient, against any person or persons who shall make such infringement; and for this purpose, the said A. B. constitutes the said Y. Z., his executors, administrators, and assigns, the lawful attorney irrevocable of the said A. B., at the costs and to the use of the said Y. Z., his executors, administrators, and assigns, to commence and prosecute in the name of the said A. B. all such suits and actions as aforesaid.

IN WITNESS [*etc., as in Form 680*].

683. Contract Between Author and Publisher for Publication of a Book Upon a Copyright.

MEMORANDUM of agreement made this day of , one thousand nine hundred and , between A. B., of , author, party of the first part, and Y. Z. & Co., of , publishers, parties of the second part.

WHEREAS, the party of the first part has in preparation a work entitled , for the publication of which the parties are desirous to provide:

IT IS AGREED by the parties hereto, contracting for themselves and their personal representatives and assigns, respectively, as follows:

The party of the first part gives to the parties of the second part the exclusive right to publish, during the full term of the copyright thereof [each volume of] said work, and upon the following terms:

The parties of the second part shall take out a copyright [upon each volume] of said work, in due form of law, in the name of the party of the first part, and deliver to him the certificate thereof, and receipts for the volumes required by law to be deposited, which copyright he shall hold subject to this contract.

They shall deliver to him, free of cost, copies [of each volume] of said work.

They shall publish said work in good style, as soon as practicable after receiving the manuscript, and in such manner as they shall deem most expedient, and shall keep the market at all times fully supplied therewith.

They shall render to him, semi-annually, as soon as practicable after the day of _____, and the _____ day of _____, in each year, an account of the number of copies [of each volume] of the work which they shall have sold during the six months preceding such day, accompanied by the certificate of the printer to the number printed [or, and shall exhibit to him, on request, their manufacturer's books, showing the number printed] during the same period; and they shall at the same time pay to him for copyright, for all copies sold by them as aforesaid, _____ per cent. of the regular retail price.

In case the parties of the second part fail to perform either of the conditions of this contract on their part, the right to publish the work shall revert to the party of the first part, and he shall then have the right of purchasing the plates [and engravings] then used in publishing the work, at a fair valuation.

IN WITNESS [*etc.*, as in Form 680];

684. Contract for Sale of Manuscript and Copyright.

THIS AGREEMENT, made this _____ day of _____, between A. B., of _____, author, party of the first part, and Y. Z., of _____, publisher, party of the second part,

WITNESSETH, that said party of the first part, in consideration of the sum of _____ dollars, agrees to sell, and does sell, to the party of the second part, the manuscript of a work, entitled _____, written, and to be prepared for the press by him; and he, the said A. B., also agrees to examine and correct the proof-sheets thereof, as they shall be furnished to him from time to time during the printing or stereotyping thereof. The said Y. Z. and his personal representatives and assigns are to have the exclusive right to take out and own the copyright, and the renewals of the copyright thereof. And the said Y. Z., for himself, his personal representatives and assigns, agrees to pay the said A. B. in the manner following: _____ dollars on the signing of this contract, _____ dollars when the whole copy, including the index, shall be ready for the printer, and the balance when the proof-sheets shall have all been corrected and returned to the printer; and also agrees to furnish to the said A. B. _____ bound copies of the work within a reasonable time after the said A. B. shall have completed his labors; the whole of said proof-sheets to be furnished the said A. B. within a reasonable time after the delivery of the manuscript.

AND IT IS FURTHER AGREED, that in case the said work shall fall short of _____ pages of the size and style of the work known as _____, exclusive of index and contents, then the said A. B. is to receive, and the said Y. Z. is to pay, a sum so much the less, in proportion to the actual number of pages; but in case said work shall contain more than _____ pages, the sum to be paid therefor is not to be increased.

IN WITNESS [*etc.*, as in Form 680].

685. Contract Between Printers and Publishers for Publication on Joint Account.

MEMORANDUM of agreement, made this day of , , between A. B., of , printer, party of the first part, and Y. Z. and W. X., composing the firm of Z. & Co., of ; publishers, parties of the second part:

WHEREAS, the party of the first part is the proprietor of the works of ; and,

WHEREAS, the parties of the second part are desirous of becoming the publishers of the same, the following points are agreed to, by and between the contracting parties:

1. The profits of each volume shall be equally divided between the two parties to this contract, said profit consisting of the difference between the actual cost of manufacturing each volume and the wholesale price of the same, said price to be fixed permanently, so far as this contract is concerned, at cents, and the party of the second part agrees to sell the books at that price, except in small lots of less than , and on trade account. The cost of manufacturing shall be made up by said party of the first part by charging the paper used at cost, the printing at his usual rates for works of a similar class, and according to numbers ordered, and the regular price for folding, collecting, waste leaves, and tissue paper, adding thereto the cost of plate paper, printing plates, cases, and any other expense that would legitimately belong to the manufacture of the book.

2. The expense of circulars and advertising of the series to be divided equally between the two parties hereto, an accurate account to be kept of the same, and rendered on the days of and in each year, the balance due from either party to be paid to the other in cash. The extent of advertising, and the amount to be expended for circulars and advertising, to be regulated by mutual agreement.

3. The party of the first part agrees to abate the copyright and use of plates, on all copies of each new volume given for editorial purposes, to the number of copies, said abatement to be made on settlement of advertising accounts, on the days of and of each year, an accurate account to be kept of what copies are presented, and to whom given, by the party of the second part.

4. The party of the second part to take of each new volume as issued, copies, and of subsequent editions, copies.

5. Payments to be made by the party of the second part to the party of the first part, by note at months from average time of the delivery of the books.

6. The books to be made in the same style, and uniform with, and not inferior in quality to, the volumes as formerly published by .

7. All copies of the books delivered in sheets, or folded and collected, to the party of the second part, to be subject to the proper deductions for binding.

8. The party of the first part, in consideration of the above, agrees to give to the party of the second part the exclusive right to publish the same.

It is understood and agreed that this contract shall be in full force and binding for the term of three years from this date, and thereafter, until one party shall have given to the other one year's notice in writing, signifying

their wish to annul this contract; and in case no satisfactory arrangement can be made for the settlement of each party's interest in the same, an arbitrator shall be chosen by each party, which said arbitrators shall choose a third arbitrator, and their decision in the case shall be final and binding on all parties. In case of the insolvency or death of the party of the first part, or the insolvency or such dissolution of the firm of the party of the second part, as shall unfavorably affect their standing and credit, it shall be considered the same as though the three years had expired, and the one year's notice of desire to terminate the contract had been given, and arbitrators shall be appointed to settle the matter as provided above, if the parties or their executors cannot agree to a settlement.

IN WITNESS [*etc., as in Form 680*].

686. Agreement for Sale and Purchase of Personal Property.

THIS AGREEMENT, made this day of , , between A. B., of , farmer, and Y. Z., of , merchant,

WITNESSETH, that the said A. B., in consideration of the agreement hereinafter contained, to be performed by Y. Z., agrees to sell and deliver to the said Y. Z., at his storehouse, in [*here specify the goods, and if desired, the quality as well as quantity*], on or before the day of , . And the said Y. Z., in consideration thereof, agrees to pay to the said A. B. the sum of dollars per , for the said , immediately upon the completion of the delivery thereof.

IN WITNESS [*etc., as in Form 680*].

687. Contract for Sale of Goods at a Price to be Fixed by Appraisal.

THIS AGREEMENT, made this day of , , between A. B., of , and Y. Z., of ,

WITNESSETH, that it is hereby agreed by the said parties, that all and singular the household goods, furniture, and stock in trade, which are the property of A. B., and contained in and belonging to the store and dwelling now occupied by the said A. B. [*or, which are mentioned in the schedule hereunto annexed*], shall, at the joint and equal charge of the said parties, be appraised by M. N. and O. P., on or before the day of next, when the said M. N. and O. P. shall, in writing by them signed, give in their appraisement to the said parties; and in case the said appraisers shall differ in such valuation, then a third indifferent person chosen by them as an umpire shall determine the same, whose valuation in writing, by him signed, shall be given in to the said parties, within three days after his election. And the said A. B. covenants with the said Y. Z. that, immediately after such valuation being made, he will make and deliver an absolute bill of sale, of all the said goods, furniture, and stock in trade, and will give possession thereof unto the said Y. Z., at the price the same shall be appraised at, as aforesaid. And the said Y. Z. hereby covenants with the said A. B., that he will accept the said property at such price, and, on the delivery thereof with the bill of sale, will pay to the said A. B. the sum of money at which the same shall be appraised as aforesaid.

IN WITNESS [*etc., as in Form 680*].

688. Contract for Sale of Stock of Goods and Good-Will of Business, with Covenant in Restraint of the Vendor.

THIS AGREEMENT, made the _____ day of _____, in the year _____, between A. B., of _____, and Y. Z., of _____,

WITNESSETH, that the said A. B., for the consideration hereinafter specified, agrees to sell to the said Y. Z., and the said Y. Z. agrees to buy of the said A. B., all the stock of goods, wares, and merchandise belonging to the said A. B., and now being in the _____ store, occupied by him in _____, together with the furniture and fixtures thereunto appertaining, and also all the merchandise of every name and nature, bought or contracted for by the said A. B., and intended for sale in the said store, and also all the interest and good-will of the business heretofore carried on there by the said A. B., together with the stock in trade, fixtures, and effects pertaining thereto, and all the hook and other debts or accounts now due and owing to said A. B., or said business, and all securities for the same, and all contracts, engagements, benefits, and advantages connected therewith, and the good-will of the business heretofore carried on there by A. B. The stock of goods, wares, and merchandise is to be inventoried to the said Y. Z. at the original cost, without including transportation expenses; and deduction is to be made for any depreciation in value on account of damage, wear, or tear; and the furniture and fixtures are to be inventoried at their fair cash value. If the parties cannot agree as to such valuation and deduction, the same shall be [*here may insert clause as to appraisal, as in Form 687*]. Said inventory is to be completed within _____ days from the date hereof, and the property above specified delivered to the said Y. Z. immediately thereupon, or upon the completion and delivery of the appraisal.

In consideration thereof, the said Y. Z. agrees to execute and deliver to the said A. B., upon delivery of said goods, as full payment of [or, to secure the payment of] the purchase money of the same, his promissory note or notes, in such several sums as the said A. B. shall direct, payable at _____ months after date, at the _____ Bank, with interest [and indorsed by M. N., of _____].

And in further consideration of the premises, and of the payment by the said party of the second part, of the consideration hereinbefore expressed, and for the purpose of enabling the said party of the second part, his personal representatives and assigns, to acquire and enter upon, manage, conduct, continue, and carry on the aforesaid business of the said A. B., the said party of the first part hath for himself, his personal representatives and assigns, covenanted, granted, promised, and agreed, and doth by these presents covenant, grant, promise, and agree to and with the said party of the second part, his personal representatives and assigns, that from and after the execution of this agreement, he will not at any time for the period of [seven years] from and after the date hereof, either alone, or jointly with, or as agent for or employe of any person or persons, firms or corporations, excepting only as agent for or employe of said party of the second part hereunto, his personal representatives or assigns, and either directly or indirectly set up, exercise, conduct, or be engaged, employed, or interested in or carry on in [the states of New York, New Jersey, Pennsylvania, or Connecticut], any occupation, interests, or privileges similar to or of the same nature with the business, occupation, interests, and privileges so heretofore exercised, conducted, and

carried on by said A. B., and so hereby sold and assigned, transferred, and set over to said party of the second part, nor set up, make, carry on or encourage, or be engaged or interested in any opposition to the said business so hereby sold, assigned, transferred, and set over, and so hereafter to be carried on by said party of the second part hereunto, his personal representatives and assigns, nor do anything to the prejudice thereof.

And it is expressly understood that the stipulations aforesaid are to apply to, and to bind the heirs, executors, and administrators of the respective parties; and in case of failure, the parties bind themselves, each unto the other, in the sum of dollars, as liquidated damages, and not as a penalty, to be paid by the failing party.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the day and year first above written.

In presence of

689. Agreement to Sell Shares of Stock in a Corporation or Joint-Stock Company.

THIS AGREEMENT, made the day of , , between A. B., of , merchant, and Y. Z., also of said place, broker,

WITNESSETH, that the said A. B. agrees to sell and convey to the said Y. Z., on or before the day of , next, shares of the capital stock of the company, now owned and held by the said A. B., and standing in his name on the books of the said company, and to make and execute unto the said Y. Z. all assignments, transfers, and conveyances necessary to assure the same to him, his executors, administrators, and assigns.

In consideration whereof, the said Y. Z. agrees to pay unto the said A. B., for such stock, dollars per share [*or*, the average cash market price of the same, for and during days preceding the said day of , to be determined by the sales made in the board of brokers in], the same to be payable as soon as the said assignment and the scrip of stock so assigned shall be properly executed and delivered to the said Y. Z.

IN WITNESS WHEREOF, the said parties have hereto set their hands [and seals] the day and year first above written.

[*Signatures, with or without seals.*]

690. Contract for Sale of Land.¹

THIS AGREEMENT, made the day of , one thousand nine hundred and , between A. B., of , merchant, of the first part, and Y. Z., of , counsellor-at-law, of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of dollars, to in hand paid [*or*, to be fully paid as hereinafter mentioned], has contracted and agreed to sell to the said party of the second part, all that certain piece or parcel of land, situate in the town of ; in county, and state of [*here insert brief description — e. g.*], known and distinguished on a map made by M. N., of the property of A. B. as lot number . And the said party of the first part agrees to execute and deliver to the said party of the second part a warranty deed for the said land: provided, and upon condition, nevertheless, that the said

¹ For corresponding forms used in various States. see Forms Nos. see Index.

party of the second part, his heirs or assigns, pay to the said party of the first part, his heirs or assigns, for the same land, the sum of _____ dollars, lawful money of the United States of America, payable as follows: [the sum of _____ dollars to be deposited in the hands of M. N., on signing this agreement, to be paid over to A. B. on the delivery of the deed], the sum of _____ dollars on the delivery of the deed, which is to be at the office of _____, at _____, between the hours of _____ and _____, on the _____ day or _____, and the sum of _____ dollars, to be secured by a purchase-money mortgage by said Y. Z., payable [*here insert terms*], together with the personal bond of said Y. Z. for said sum, in the penalty of _____ dollars: And the said party of the second part, for himself, his heirs, executors, and administrators, does covenant and agree to and with the said party of the first part, his heirs and assigns, that the said party of the second part will pay the said several sums as they severally become due, with the interest thereon, without deduction of any taxes or assessments whatever. And it is further agreed between the parties to these presents, that if default be made in fulfilling this agreement, or any part thereof, on the part of the said party of the second part, then, and in such case, the said party of the first part, his heirs and assigns, shall be at liberty to consider this contract as forfeited and annulled, and to dispose of the said land to any other person, in the same manner as if this contract had never been made.

IN WITNESS WHEREOF, the parties hereto have herennto set their hands and seals, the day and year above written.

Sealed and delivered in presence of _____

[*Signatures and seals.*]

[*Signatures of witnesses.*]

691. Contract for Sale of Land with Provision Against Nuisances.

ARTICLES OF AGREEMENT, made the _____ day of _____, one thousand nine hundred and _____, between A. B., of _____, in _____, county of _____, and state of _____, party of the first part, and _____, of the same place, party of the second part, in manner following: The said party of the first part, in consideration of the sum of _____ dollars, to him duly paid, and of the covenants, agreements, and conditions herein, hereby agrees to sell unto the said party of the second part, all those certain lots, pieces, or parcels of land, situate, lying, and being near _____ Station, on the _____ railroad, in the said township of _____, county of _____, and state of _____, known, distinguished, and designated on a certain map, entitled "Map of villa sites at _____, property of A. B.," filed in the office of the clerk of the county of _____, on _____, 19____, as lots Nos. _____, for the sum of _____ dollars, which the said party of the second part hereby agrees to pay to the said party of the first part, as follows: [*Here state terms of payment.*]

And the said party of the first part, on receiving such payments, at the time and in the manner herein provided, shall, at his own proper costs and expense, execute and deliver to the said party of the second part, or to his assigns, a proper deed, for the conveying and assuring to him, or them, the fee simple of the said premises, free from all incumbrance, as herein provided, which deed shall contain a general warranty, and also the clause or provision against the allowance or permission of nuisances, with the covenant or agreement against the manufacture or sale of spirituous or other intoxicating

liquors, and as to the erection of buildings, which is printed on the back of this contract, marked "A" [*insert provisions against nuisances, as in Form 629, or other forms given in Index*], to which reference is hereby made as part hereof, and which deed shall be delivered at o'clock, on the day of , at the office of the party of the first part, street, city, at which time and place said payments are to be made, and this contract carried out.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of

692. Contract for the Sale of Property with Receiver of Judgment Debtor, Made Subject to Approval of Court.

THIS AGREEMENT, made the day of , in the year one thousand nine hundred and , between A. B., a receiver of the property of C. D., a judgment debtor, party of the first part, and E. F., party of the second part, in the manner following:

Said party of the first part, in consideration of the sum of dollars, to be fully paid as hereinafter mentioned, hereby agrees to sell unto the said party of the second part [*here insert description of the premises*], and the said party of the second part hereby agrees to purchase said premises at the said consideration of dollars, and to pay the same as follows:

The said party of the second part is to take the said premises, subject to two mortgages, one for dollars, to , and the second for dollars, to , now upon the said premises, and is to pay the said party of the first part the further sum of dollars, on the day of , at o'clock, M.

IT IS FURTHER AGREED, that this contract shall not be binding upon the parties hereto unless the said party of the first part can within days after the signing of these presents, obtain the permission of the proper court for the sale of the said premises, subject also to the leases now on the said property; and the said party of the first part, on receiving such payment of dollars, at the time and in the manner above mentioned, shall, at his own proper cost and expense, execute, acknowledge, and deliver to the said parties of the second part, or to their assigns, a proper deed, with the usual covenant against grantor's acts for the conveying and assuring to them the fee simple of the said premises, free from all incumbrances, except the two mortgages hereinabove mentioned, with interest thereon to the date when the interest last became payable thereon, and which deed shall be delivered on the day of , at the office of , at No. street, in the city of .

It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties.

IN WITNESS WHEREOF [*etc., as in Form 691*].

693. The Same; With Building Loan.

THIS AGREEMENT, made the _____ day of _____, one thousand nine hundred and _____, between A. B., of the city of _____, gentleman, party of the first part, and Y. Z., of the same place, builder, party of the second part, WITNESSETH as follows:

The said party of the first part agrees to sell, and the said party of the second part agrees to purchase from him, all those _____ certain lots, pieces, or parcels of land, situate, lying, and being in the _____ ward of the city of _____, and which, taken together, are bounded and described as follows — to wit: [*description*] all for the sum of _____ dollars, payable as follows, and on the terms and conditions following — that is to say.

Said party of the second part shall forthwith commence on said lots of land the erection of _____ good and substantial dwelling-houses, to be of brick, with brown-stone fronts, three stories, basement and subcellar, in height, each of which to be of the width of the lot upon which it shall stand, by _____ feet in depth, to be built of good materials and workmanship, and to conform in all respects to the plans and specifications and drawings of M. N., architect, as the same have been modified and signed by both of the parties hereto.

And to enable said party of the second part to erect and finish said dwelling-houses, and the walks and yards in front and rear of the same, the said party of the first part does agree to lend to the said party of the second part, the sum of _____ dollars towards the erection and finishing of each of the said houses; and that such loan shall be made at the times and in the manner following, to wit:

- § _____ 1. When the first tier of beams are on each and every house and the rear walls are up to the same, _____ dollars.
- § _____ 2. When the second tier of beams are on each and every house and the rear walls are up to the same, _____ dollars [*and so on with each stage at which an advance is to be made*].
- § _____ 9. When each and every house shall be completely finished (including the walks in front and rear yards), ready for occupation, the remaining sum of _____ dollars.

AND IT IS FURTHER AGREED, that the said houses shall be so erected and finished under the direction and supervision of O. P., who is hereby appointed superintendent for that purpose, and whose certificate in writing, certifying that the work has been done to his satisfaction, and that the payment demanded is due, shall first be obtained to entitle the said party of the second part, to the several amounts agreed to be loaned as aforesaid. The expenses of the said _____ shall be borne by the party of the first part.

AND IT IS FURTHER AGREED, that if, at any time, when an advance, on account of such loans, is demanded, there shall be any unsatisfied mechanic's lien or liens affecting the title of said premises, or any part thereof, the amount agreed to be loaned shall not be advanced until such lien or liens are satisfied or discharged of record.

AND IT IS FURTHER AGREED, that when the said _____ houses, walks, and yards shall be completely finished, ready for occupation as aforesaid, and when the certificate of the said O. P. shall be produced to that effect, and when all taxes, assessments, and Croton water rents, assessed or imposed upon said premises, or any part thereof, after the date of this agreement,

shall be paid; and when all liens affecting said premises, or any part thereof, incurred by the said party of the second part, shall be discharged of record, then the said party of the first part shall, on the execution and delivery of the bonds and mortgages hereinafter mentioned, convey the said premises to the said party of the second part, by warranty deed, with the usual full covenants, in which deed his wife shall join, and by which the said premises shall be conveyed free from all incumbrances; that to entitle the said party of the second part to such deed, he shall, at the time of the delivery thereof, execute and deliver to the said party of the first part, bonds and mortgages, each of which bonds shall be conditioned for the payment of the sum of dollars, and secured by a mortgage of or upon one of the said lots, with the house then erected thereon. All of said bonds and mortgages shall bear date on the day of the delivery of said deed of conveyance, and the money secured thereby shall become due and payable in three years from the date thereof, with interest at six per cent. per annum, to be computed from such date, and to be paid semi-annually, and shall contain the usual interest condition of thirty days. All of said mortgages shall be executed by the said party of the second part and his wife, and shall contain usual insurance covenants that the premises shall be kept insured in an amount to be approved by, and the policies to be assigned to, the party of the first part, and said mortgages shall also contain the usual tax, assessment, and interest [and receiver] clauses.

AND IT IS FURTHER AGREED, that interest at the rate of six per cent. per annum shall be paid by the party of the second part to the said party of the first part on the amount of the purchase money above mentioned, from the date of this agreement, and on the amounts agreed to be loaned from the date of their respective advances to the date of said bonds and mortgages, or such interest may be retained by said party of the first part out of and from the last amount so agreed to be loaned. And said party of the second part shall bear and pay all taxes, assessments, and Croton water rents that may be assessed or imposed upon said premises after the date of this agreement, as also the costs and charges of R. S., counselor-at-law, for drawing this agreement and the bonds and mortgages aforesaid. And it is hereby made optional with the said party of the first part to have the amount of the purchase money and loans secured by more than bonds and mortgages, provided the same do not exceed two mortgages on each of said houses and lots. And it shall also be optional with said party of the first part to mortgage said premises to the amount of said purchase money and loans, or any part thereof, and then convey said premises subject to such mortgages, taking from the said party of the second part other bonds to make up the deficiency, if any, of the full amount of said purchase money and loans, secured by mortgages of or upon said houses and lots, and containing the same terms and conditions as the bonds and mortgages first above mentioned.

AND IT IS FURTHER AGREED, that when said houses shall be inclosed and roofs on, said party of the second part shall cause the same to be insured against loss or damage by fire, in an insurance company in the city of , and shall assign the policies of insurance to said party of the first part as collateral security for said purchase money and loans; that such insurance shall from time to time be increased as said houses progress in the course

of erection until they shall be completely finished; and that at the time of the delivery of said deed policies of insurance shall be effected on each house and assigned to said party of the first part; and that whenever an insurance is to be made or effected as above provided, it shall be in an insurance company, and to an amount to be designated and approved by said party of the first part; and in case said party of the second part shall fail to effect such insurance or assign such policy or policies, then the said party of the first part shall effect the same, charge the expense thereof to the said party of the second part, and deduct the same from the next advance or installment of said loan that shall thereafter become due.

AND IT IS FURTHER AGREED, that the said party of the second part shall not sell, assign, or dispose of this agreement, or his interest therein, without the written consent of said party of the first part first had and obtained; and that said party of the first part shall not be required to make said loan, or any part thereof, or said deed to, or accept the bonds and mortgages of any other party or parties, unless he shall elect so to do.

AND IT IS FURTHER AGREED, that said party of the second part shall forthwith commence the erection of said houses, shall proceed with the same without unnecessary delay, and shall furnish all materials, and completely erect and finish the same, with the walks and yards thereof, on or before the day of , ; and in case the said party of the second part shall fail to erect and completely finish the said houses, with the walks and yards thereof, on or by the day of , , or in case the work of erecting said houses shall, in the opinion of said O. P., be unreasonably delayed, or in case the said party of the second part shall sell or assign his interest in or under this agreement without the written consent aforesaid, that then, and in either of such events, the said party of the first part shall have the right, and he is hereby expressly authorized and empowered to sell the whole of said premises, together with the unfinished buildings thereon, at public auction, to the highest bidder, on giving to said party of the second part fifteen days' notice thereof, and on advertising the same for fifteen days in one of the public newspapers printed in the city of , and that at such sale said party of the first part shall be allowed to bid; which sale shall be a perpetual bar against any claim to be made for any of the said buildings or erections, and any claims under this agreement by the said party of the second part, and all persons claiming under him; and he, the said party of the second part, shall forthwith quit and abandon said premises; and this agreement shall thenceforth cease and determine, except that in case the said sale shall produce an amount more than is sufficient to pay the contract price of said lots, and loans which have then been made, and interest and expense of insurance, and costs of sale as aforesaid, the excess shall be paid to the said party of the said second part. And if such sale shall not produce sufficient to satisfy said contract price, loans, interest, expense of insurance, and costs of sale, then the said party of the second part shall forthwith, and on demand, pay such deficiency to the said party of the first part.

AND IT IS FURTHER AND FINALLY AGREED, that the stipulations and agreements aforesaid shall apply to and bind the heirs, executors, and administrators of the respective parties thereto.

IN WITNESS, ETC.

694. Contract for Sale of Farm and Mill; Payment in Installments.

THIS AGREEMENT, made this day of , , between A. B., of the town of , in the county of , and state of , of the first part, and Y. Z., of the town aforesaid, of the second part, WITNESSETH: That the said party of the first part hereby agrees to sell to the said party of the second part his house, farm, and premises, whereon he now lives, situate in the town of , containing about acres, more or less, together with the crops growing on the same; all the lumber for the house, all the tools belonging to the sawmill, all the apparatus belonging to the gristmill, together with all the fixtures and machinery belonging to the fulling-mill and carding machine, together with every article attached to the freehold, for the sum of dollars, which the said party of the second part agrees to pay as follows, viz.: dollars upon signing this agreement; dollars by the day of next; dollars on the day of next, and giving a mortgage on the farm whereon he now lives, for dollars, in equal annual payments, with annual interest on the same; at which time the said party of the first part is to make and execute to the said party of the second part a good and sufficient warranty deed for the premises hereby sold, upon the delivery of which the said party of the second part is to secure the remainder, to wit: dollars by a bond and mortgage for the payment of said remaining sum, in equal annual installments, with interest semi-annually upon the same, interest to commence on the day of next, at which time the said party of the second part is to have full possession of all the premises. And it is agreed by the said parties that this agreement is to bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by these presents.

IN WITNESS, ETC.

695. Stipulation as to Terms of Purchase-Money Mortgage.

With the privilege to the party of the second part, at any time before the expiration of said ten years, to pay off said mortgage in whole or in sums of thousand or more dollars at a time, on giving months' notice to the party of the first part of intention so to do, and the bond and mortgage to contain a clause to that effect.

696. Stipulation as to Time of Taking Possession and Income.

IT IS FURTHER AGREED between the said parties, that the said Y. Z. shall be let into possession of the premises on the day of next; but that all arrears of rent and other profits, arising from the said premises, which shall be due and payable on or before that day, shall belong to the said A. B., his heirs or assigns, and that he and they shall have full liberty to collect and receive the same.

697. Stipulation as to Possession, Taxes, etc.

IT IS FURTHER AGREED, that the party of the first part is to have and retain possession of the premises until the day of next, when the same shall be delivered up to the party of the second part, upon his compliance with the agreements hereinabove contained; that the said party of the second part shall pay all taxes and assessments, becoming chargeable to, and upon the said

premises, after the delivery of the possession thereof to him as aforesaid; and that if default be made in fulfilling this agreement, or any part thereof, on the part and behalf of the said party of the second part, then, and in such case, the said party of the first part shall be at liberty to consider this contract as forfeited and annulled; and if the said party of the second part shall be in the possession of the said premises, at the time of making such default, the party of the first part shall have full and ample right to proceed against the said party of the second part, and remove him therefrom, in the manner now provided by law for the removal of persons forcibly entering into the possession of, and detaining, any lands or other possessions.

698. Provision that Existing Insurance shall Inure to the Benefit of the Purchaser.

And in case the house on said premises should be injured by fire before the said day of , the said A. B. shall hold the said insurance in trust for, and will then transfer the same to the said Y. Z. with the deed of the premises.

699. Contract for Exchange of Property.

THIS AGREEMENT, made and entered into the day of , between A. B., of , in the county of , and state of , party of the first part, and Y. Z., of the same place, party of the second part, WITNESSETH: The said party of the first part, in consideration of the premises and of one dollar duly paid by the party of the second part, the receipt whereof is hereby acknowledged, and also in consideration of the conveyance of the property hereinafter mentioned, belonging to the said party of the second part, doth hereby agree on his part, to sell, grant, and convey unto the said party of the second part [*here describe premises*]. The purchase price of said premises shall be dollars, of which dollars is in mortgage, leaving an equity of dollars.

AND the said party of the second part, in consideration of the premises and of one dollar duly paid by the party of the first part to the said party of the second part, the receipt whereof is hereby acknowledged, and in exchange of and for the property and consideration first above mentioned, doth likewise agree on his part to sell, grant, and convey unto the said party of the first part [*here describe premises*]. The purchase price of said last-mentioned premises shall be dollars, of which dollars is in mortgage, leaving an equity of dollars. The difference between the values of the respective premises, over and above incumbrances, being dollars, shall be paid by the party of the part, as follows: The parties to these presents mutually agree to execute, acknowledge, and deliver, each to the other, or to their assigns, each at their own proper cost and expense, a proper warranty deed or deeds for the conveying and assuring, each to the other, the fee simple of the property of each, above described, free from all incumbrances, of any name or nature whatever [*if any exceptions, state them here*], and which deeds shall be delivered and exchanged on the day of , at o'clock, in the noon of that day, at the office of , No. street, in the city of .

AND for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves,

each unto the other, in the sum of _____ dollars, as fixed, settled, agreed, and liquidated damages, and not as a penalty, to be paid by the party failing to complete on his part, and which said sum shall constitute a specific lien upon the premises of said party so failing to complete.

AND the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of _____ *[Signatures and seals.]*

700. Contract Between Several Persons to Unite in a Purchase, Each to Bear a Proportion of the Purchase Money and Charges.

WHEREAS we, A. B., of _____, manufacturer, and C. D., of _____, farmer, and E. F., of _____, blacksmith, are desirous to purchase the parcel of land situate in _____, now in the occupation of M. N. Now we severally agree with each other, that if any one or more of us shall purchase the same [or any part thereof], each of the others of us will pay upon demand his respective proportion of such purchase money, and that all charges and expenses relating thereto shall be borne by us in equal proportions, and that any such purchase shall be for the joint and equal benefit of us all; provided, however, that the purchase money for the said parcel of land do not exceed _____ dollars (or in that proportion for a part).

IN WITNESS, ETC.

701. Agreement for a Lease.

THIS AGREEMENT, made this _____ day of _____, between A. B., of the city of New York, merchant, and Y. Z., of said city, merchant,

WITNESSETH, that the said A. B. agrees, by indenture, to be executed on or before the _____ day of _____ next, to demise and let to the said Y. Z., a certain house and lot in said city, now or late in the occupation of M. N., known as No. _____, in _____ street, to hold to the said Y. Z., his executors, administrators, and assigns, from the _____ day of _____ aforesaid, for and during the term of _____ years, at or under the clear yearly rent of _____ dollars, payable quarterly; in which lease there shall be contained covenants on the part of the said Y. Z., his executors, administrators, and assigns, to pay the rent [except that in case the premises are destroyed by fire, the rent is to cease until they are rebuilt by the said A. B.], and to pay all taxes and assessments [except the ground rent]; to repair the premises [except damages by fire]; not to carry on any offensive or other business on the premises, without the written permission of the said A. B.; to deliver the same up at the end of the terms, in good repair [except damages by fire, as aforesaid]; with all other usual and reasonable covenants, and a proviso for the re-entry of the said A. B., his heirs and assigns, in case of the nonpayment of the rent for the space of fifteen days after either of the said rent days, or the nonperformance of any of the covenants. And there shall also be contained covenants on the part of the said A. B., his heirs and assigns, for quiet enjoyment; to renew said lease at the expiration of said term, for a further period of _____ years, at the same rent, on the said Y. Z., his executors, administrators, or assigns, paying the said A. B., his executors, administrators, or assigns, the sum of _____ dollars, as a premium for such renewal; and that in case of an acci-

dental fire, at any time during the term, the said A. B. will forthwith proceed to put the premises in as good repair as before such fire, the rent in the meantime to cease. And the said Y. Z. hereby agrees to accept such lease on the terms aforesaid. And it is mutually agreed that the cost of this agreement, and of making and recording said lease, and a counterpart thereof, shall be borne by the said parties equally.

IN WITNESS, ETC.

702. Contract for Building.

MEMORANDUM of agreement made this day of , one thousand nine hundred and , between A. B., of , merchant, of the first part, and Y. Z., of , builder, of the second part.* The said party of the second part covenants and agrees to and with the said party of the first part, to make, erect, build, and finish in a good, substantial, and workmanlike manner, on the lot belonging to the party of the first part, and known as No. , in street, one brick dwelling agreeable to the draft, plan, and specifications hereto annexed, of good and substantial materials [*or, of such materials as the party of the first part may find and provide therefor, by the day of next.* And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of dollars, lawful money of the United States, as follows: the sum of [*here state terms of payment*].

[*If the owner is to furnish materials, add: And also, that he will furnish and procure the necessary materials for the said work, in such reasonable quantities, and at such reasonable time or times, as the said party of the second part shall or may require.*]

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of dollars, as liquidated damages, and not as a penalty, to be paid by the failing party.

IN WITNESS, ETC.

703. Special Stipulations which may be Inserted According to the Nature of the Case.

The said building is to be completed and delivered to the party of the first part entirely finished and ready for the occupation of tenants on the day of , , unless such delivery be prevented by accidental fire.

The party of the first part may make, or require to be made, alterations in the plan of construction from that herein and in said specification and plan expressed, without annulling or invalidating this agreement; and, in case of any such alterations, the increase or diminution of expense occasioned thereby shall be estimated according to the price fixed by these presents for the whole work and materials, and allowances shall be made on one side or the other, as the case may be.

If there shall be any delay on the part of the party of the second part, in erecting or completing said building, that in the opinion of the superintendent will prevent its being completed on the day herein specified, then the party of the first part may, at his option, either employ persons other than the party of the second part to do the whole or any part of said work, and furnish the whole or any part of said materials, and deduct the cost of the same from the

sum hereinbefore agreed to be paid by the party of the first part, or leave the completion of said building unto the party of the second part, and enforce his claim for damages, should said building be not completed on the day herein specified.

If the said building shall not be finished, completed, and delivered in manner aforesaid by the said day of next, the said party of the second part shall forfeit the sum of dollars for each and every day from and after that time during which the said building shall remain unfinished, and not completed and delivered as aforesaid, to be deducted from the sum hereinbefore agreed to be paid by the party of the first part; time to be of the essence of this contract.

In case of any disagreement between said parties, relating to the performance of any covenant or agreement herein contained, such disagreement shall be referred to three disinterested persons, one to be chosen on each side, and they two to choose another; the decision in writing, signed by any two of whom, shall be final.

704. Contract for Masons' Work of a Building.

[As in Form No. 702, to the ", continuing thus:]

The said party of the second part doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, his executors or administrators, shall and will, for the considerations hereinafter mentioned, on or before the day of next, well and sufficiently erect and finish the masons' part of stores, on the lots numbers and , in street, in the city of , agreeable to the several drawings and specifications made by M. N., architect, and signed by the parties hereto, within the time aforesaid, in a good, workmanlike, and substantial manner, to the satisfaction and under the direction of the said architect, or such other architect in good standing as the party of the first part shall select for that purpose, to be testified by a writing or certificate, under the hand of the said architect; and also shall and will find and provide such good, proper, and sufficient materials of all kinds whatsoever, as shall be proper and sufficient for completing and finishing all the stone-masons, bricklayers, plasterers, brown-stone cutters, excavators, granite and blue-stone cutters, and other works of the said buildings mentioned in the said specifications, for the sum of dollars. And the said party of the first part does hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said party of the second part, his executors and administrators, that he, the said party of the first part, his executors and administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said party of the second part, as specified, well and truly pay, or cause to be paid, unto the party of the second part, his executors, administrators, or assigns, the sum of dollars, lawful money of the United States of America, in manner following: [*here specify terms of payment*], when all the works are completely finished, according to the plans and specifications, dollars. Provided that in each of said cases a certificate be obtained and signed by the said architect.

AND IT IS HEREBY FURTHER AGREED by and between the said parties:

1. The specifications and drawings are intended to co-operate, so that any work exhibited in the drawings and not mentioned in the specifications, or *vice versa*, are to be executed the same as if it were mentioned in the specifications and set forth in the drawings, to the true meaning and intentions of the said drawings and specifications, without any extra charge whatsoever.

2. The contractor, at his own proper costs and charges, is to provide all manner of materials and labor, scaffolding, implements, molds, models, and cartage, of every description, for the due performance of the several erections.

3. Should the owner, at any time during the progress of the said building, request any alteration, deviation, additions to or omissions from said contract, the same shall be made, and shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract, as the case may be, by a fair and reasonable valuation.

4. Should the contractor, at any time during the progress of the said work, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have the power to provide materials and workmen, after three days' notice in writing being given, to finish the said work, and the expense will be deducted from the amount of the contract.

5. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, the same shall be decided by the said M. N., or such other architect in good standing as the party of the first part shall appoint to oversee said buildings, and his decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work or works omitted, the same shall be valued by two competent persons — one employed by the owner and the other by the contractor — and those two shall have power to name an umpire, whose decision shall be binding on all parties.

6. The owner shall not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof, respectively, or of any of the materials or other things used and employed in finishing and completing the same (loss or damage by fire excepted).

7. Should any claim or claims be made by any person for work done, or materials furnished for the said building, upon the employment, or on the purchase, or alleged employment or purchase, by the party of the second part, and a notice of such claim be filed, to create a lien upon said building, under any law of the state, now in force, or which may be in force, the party of the first part shall be at liberty to retain in his hands, out of any moneys which might otherwise be payable to the party of the second part, the amount of such claim or claims, and any reasonable costs and expenses to which he is liable to be subjected by reason thereof, until such claim be canceled and discharged of record by the party of the second part, who hereby agrees to cause such lien or liens to be forthwith settled, canceled, and discharged without loss, damage, or expense to the parties of the first part, and without any delay in the progress of the work aforesaid.

IN WITNESS, ETC.

705. Contract to Build a Party Wall.¹

MEMORANDUM OF AGREEMENT, made this day of , in the year , between A. B., of the city of , merchant, of the first part, and Y. Z., of said city, merchant, of the second part:

WHEREAS, the said A. B. is the owner in fee of the lot known as No. in street, in the ward of the city of , and the said Y. Z., the owner in fee of the lot known as No. in said street, immediately adjoining to and on the side of said lot, on which lots respectively the parties are about to erect brick houses; and,

WHEREAS, it has been agreed between them, that the said Y. Z., in erecting his house, may make use of the wall of the said A. B., immediately adjoining the said lot of the said Y. Z., as a party wall, upon the terms, conditions, and considerations hereinafter mentioned, the wall so to be used as a party wall, standing and being entirely on the said lot of the said A. B.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the said party of the first part, in consideration of the sum of dollars, to him in hand paid by the party of the second part, the receipt whereof is acknowledged, shall immediately build and erect a wall on the side of said lot No. , so that the side of said wall shall adjoin the side of said lot of Y. Z.; said wall shall be built feet deep easterly from the easterly side of street, and high above the sidewalk; and the said party of the first part hereby does grant and convey to said party of the second part the right to use said wall as a party wall, in the erection of a house on the said lot No. , and for that purpose to insert the beams of the house on the said lot into the walls so to be built by the party of the first part, to the extent of inches, and to insert two chimney-backs into said wall to the extent of inches each, and, for the same purpose, to insert or tie the courses of the front and rear walls into said party wall as may be necessary, and to keep and maintain such use of said party wall so long as said wall shall stand.

And the parties mutually covenant and agree, that if it shall hereafter become necessary to repair or rebuild the whole, or any portion of the said party wall, the expense of such repairing or rebuilding shall be borne equally by them, their respective heirs and assigns [as to so much and such portion of said wall as the said Y. Z., his heirs and assigns, shall or may use for the purposes aforesaid]; and that whenever the said party wall, or any portion thereof, shall be rebuilt, it shall be erected on the same spot where it is now to stand, and be of the same size, and the same or similar materials, and of like quality.

It is further mutually agreed between the said parties, that this agreement shall [be perpetual, and] at all times be construed as a covenant running with the land; but that no part of the fee of the soil upon which the wall of the said A. B., above described, is to stand, shall pass to or be vested in the said Y. Z., his heirs or assigns, by virtue of these presents.

IN WITNESS, ETC.

¹ When contract, etc., is a covenant running with the land, or merely a personal contract, owners may under certain conditions be a party wall. *Pearsall v. Westcott*, 30 App. Div. see *Sebold v. Mulholland*, 155 N. Y. 455. A 99. wall entirely upon the premises of one of the

706. Agreement for Changing Mortgage Security.

THIS AGREEMENT, made this day of , , between A. B., of , and Y. Z., of , WITNESSETH, that WHEREAS, the said A. B. hath this day sold and conveyed unto the said Y. Z. certain lands, situate in the village of ; and, in order to secure the payment of the sum of dollars, part of the consideration therefor, the said Y. Z. has executed and delivered to the said A. B. a mortgage upon said premises, together with his bond for the payment of the said sum; and,

WHEREAS, it is the intention of the said Y. Z. to divide the said premises into village lots, and to sell and convey the same to third persons:

Now, THEREFORE, the said A. B., in consideration of the premises, does for himself, his heirs, executors, administrators, and assigns, covenant and agree to and with the said Y. Z., his heirs, executors, administrators, and assigns, that he and they shall at all times hereafter have the right of changing the security above mentioned, by substituting instead of the same, or of any part thereof [*here specify the substituted security allowed*]; and that he, the said A. B., his heirs, executors, administrators, or assigns, will, upon request to him or them made, forthwith execute and deliver to the said Y. Z., his heirs, executors, administrators, or assigns, a good and sufficient discharge of the said mortgage [*or, good and sufficient releases of the lien upon any portion of the premises therein described*], whenever the said Y. Z., his heirs, executors, administrators, or assigns, shall furnish the said A. B., or his representatives, as aforesaid, with such other security as above mentioned.

IN WITNESS, ETC.

707. Voting Trust Agreement.

THIS AGREEMENT, made and entered into this first day of September, , by and between the holders of the certificates of the capital stock of the New York Railroad Company (hereinafter referred to as the stockholders), parties of the first part, and A. B., C. D., and E. F. (hereinafter referred to as trustees), parties of the second part, WITNESSETH:

That each of the holders of the certificates of the capital stock of the Railroad Company, who shall deposit the same with the Trust Company of New York (hereinafter called the trust company), after being properly transferred on the books of the railroad company to said trustees, and duly assigned by them in blank, agrees for himself and not for the others, but to and with the others and said parties of the second part, as follows:

First. The said shares of capital stock shall remain on deposit with the depositary above named for the full period of five years from the 1st day of September, 19 , viz.: until the 1st day of September, 19 , except as hereinafter provided.

Second. That during said period of five years said trustees shall control the said stock for the purpose of voting on the same in person or by proxy at any annual, special, or other meeting of the stockholders, convened for any purpose whatever.

Third. The Trust Company, depositary designated hereunder, shall issue to the said stockholders certificates of beneficial interest in such denomination, and made out in the name or names of such person or persons, corporation or

corporations, as the depositing certificate holders may direct, and which certificate of beneficial interest shall be in substantially the form following, to wit:

No. Shares.

CERTIFICATES OF TRUST COMPANY, FOR THE DEPOSIT OF THE STOCK OF THE NEW YORK RAILROAD COMPANY.

Trust Company, having received on deposit certain certificates of stock of the New York Railroad Company, of the par value of one hundred dollars each, in trust, under the provisions of an agreement dated the 1st day of September, 19 , between the holders of certificates of the capital stock of the said New York Railroad Company, and A. B., C. D., and E. F., trustees, to which agreement the holder hereof assents by receiving this certificate,

HEREBY CERTIFIES, that is entitled, subject to the provisions of said agreement, to an undivided equitable interest in the said deposited shares, equivalent in amount to the proportion that the number of shares for which this certificate is issued shall bear to the total number of shares of said stock deposited, without, however, the right to vote on any of said shares, which right is exclusively vested in, and is to be exercised by, the trustees named in said agreement and their successors; or to a pro rata proportion of the price paid to said trust company, if said shares are sold as provided in said agreement.

Upon the termination of the trust upon which the said stock was deposited, the holder hereof will be entitled to receive from this company, upon surrender of this certificate, duly indorsed, a certificate for shares of the capital stock of the said New York Railroad Company so deposited, unless said deposited certificates shall have been sold, as provided in said agreement, and the purchase money paid to said trust company; in which event the holder hereof will be entitled, upon like surrender, to receive, in lieu of his said shares, his pro rata proportion of the said purchase money so paid to this company. The interest in said stock represented by this certificate is assignable only by transfer on the books kept by the said trust company for that purpose, by the holder hereof in person or by proxy, upon surrender of this certificate properly assigned.

Dated , , . TRUST COMPANY.
By .

Fourth. The said certificates so issued may be transferred in person or by attorney from time to time, and new certificates issued by the trust company, as therein provided; and the deposit of the said share certificates and the acceptance of the trust company certificates shall constitute the depositors parties hereto with the same effect as if they had signed this agreement.

Fifth. The trustees and their successors are authorized to sell and dispose of the said capital stock so deposited, to any party or parties, corporation or corporations, upon the consent of ninety per cent. in amount of the holders appearing on the books of the trust company, of the said certificates of beneficial interest, for such consideration in money as the said ninety per cent. may agree upon, and when so agreed upon, the trust company shall be notified thereof in writing, signed by all of the trustees. Upon receipt of such notice in writing so signed, the trust company shall deliver up the said cer-

tificates held by it hereunder to the said trustees, or as they may direct, on receiving the consideration money mentioned in the said notification.

Sixth. The said trustees shall and are hereby authorized to collect any and all dividend or dividends that may accrue upon the said stock, and after paying the charges and expenses of the trust company and the costs and expenses of executing this trust, pay the balance remaining over to the depositing certificate holders as they may be properly entitled thereto.

Seventh. In the event of the death, resignation, or refusal to act of any of the said trustees hereinbefore mentioned, the surviving or remaining trustees may designate a successor, by making the said designation in writing and filing the same with the trust company, and the certificate or certificates of the said New York Railroad Company standing in the name of the trustees may be indorsed or transferred by any successor trustees for the time being with the same effect as if indorsed and transferred by the trustees hereinbefore mentioned, and the successor trustee shall have, and may join in exercising, the power of sale and notification in article fifth hereof, as therein provided, and all other powers and trusts hereunder.

Eighth. The Trust Company designated as herein provided, or its successors in the trust, shall be and remain the agent for the transfer of the capital stock of the said New York Railroad Company, until the expiration of the trust hereby created. It and its successors shall receive a reasonable compensation for its and their services, counsel fees, and expenses as such transfer agent, and in the execution of this trust, to be paid by the New York Railroad Company, and as aforesaid. It or any successor may resign this trust at any time by giving thirty days' written notice of its intention to resign, directed to all and delivered to any one of the trustees hereunder or their successors.

Ninth. None of the parties hereto assumes any personal liability for anything done or omitted to be done by them, or any of them, in good faith, nor for the act of any agent or attorney employed by them in the execution of the trust.

Tenth. In case of the resignation of the trust company, or its refusal to continue to act as trustee, or its removal from the trust, a successor trust company trustee, for the purpose of executing this trust, may be appointed by a majority of the trustees then acting hereunder.

Eleventh. The trustees shall keep a record of their proceedings, and they may act by a majority of their whole number at any regular or special meeting convened on notice, or by writing signed by such majority without a formal meeting. The power of the trustees to vote, sell, or consent on or in respect to the shares deposited with the trust company herein, shall determine on the 1st day of September, 19 , or sooner, upon consent in writing of the trustees delivered to and lodged with the said trust company, and the said voting trustees are hereby fully empowered to give and deliver such consent at any time in their sole and absolute discretion. Upon such expiration or termination, the said shares of stock of the New York Railroad Company, then held hereunder, shall be distributed among the registered holders of the said stock trust certificates of beneficial interest, pro rata, upon the surrender of such stock trust certificates of beneficial interest, duly indorsed, to the trust company.

This instrument, or any other paper in writing required by this instru-

ment to be signed or executed hereunder, may be executed in any number of concurrent instruments of similar tenor, or may be signed or executed in person or by attorney in fact duly acknowledged.

IN WITNESS WHEREOF, the parties of the first part have executed these presents, by depositing their said stock, as herein provided, and the said parties of the second part have executed these presents by affixing their signatures thereto.

A. B.,

C. D.,

E. F.,

Voting Trustees.

708. Plan and Agreement of Re-organization.

AGREEMENT, made this day of , between A. B., C. D., and E. F., a committee acting at the request and on behalf of the respective bondholders and stockholders of New York Street Railway Company, and of Riverside Railway Company (hereinafter called the committee), of the first part, and the respective holders of the bonds and stocks of said companies who have assented and who shall hereafter assent to this agreement by depositing their bonds or stock as hereinafter provided, of the second part, WITNESSETH:

WHEREAS, the New York Street Railway Company (hereinafter called New York Company), made default on April 1, , on October 1, , and on April 1, , in the payment of the interest which became due on said dates respectively upon bonds issued by it secured by a mortgage to Trust Company, as trustee, and which mortgage is now in process of foreclosure; and the Riverside Railway Company (hereinafter called the Riverside Company), a company formed by the consolidation of the New York Company and the Western Street Railway Company, has made default on September 1, , and on March 1, , in the payment of the interest which became due on said dates respectively upon the consolidated bonds issued by it secured by a mortgage to Trust Company, of New York, as trustee; and,

WHEREAS, it is necessary for the preservation and protection of the property and the rights and interests of the holders of both of said issues of bonds, and of the stocks of said companies that a plan of reorganization should be adopted, and the committee have at the request of a large number of the bondholders and stockholders of New York Company, and of the bondholders and stockholders of Riverside Company consented to act as a committee to effect such reorganization;

NOW, THEREFORE, in consideration of the premises and of the agreements herein contained, and of other valuable considerations, the parties agree together as follows:

First. The said A. B., C. D., and E. F. are hereby constituted and appointed a reorganization committee to exercise the powers and perform the duties herein set forth, and have consented to act in that capacity.

Second. The committee shall invite, in such manner as it shall deem advisable, the respective bondholders and stockholders of the New York and Riverside Companies to assent and become parties to this agreement, by depositing their bonds and stock certificates with Trust Company of New York city, and fixing a time within which it may be done. Each bondholder who shall deposit his bond or bonds (with transfer thereof duly executed, if registered), with all said defaulted and all unmatured coupons or cer-

tificates of Trust Company, representing bonds heretofore deposited with it, and each stockholder who shall deposit his stock certificates duly indorsed shall receive therefor a certificate or certificates of said trust company in substantially the form hereto annexed, marked "A." Only the holders of such certificates of deposit shall be entitled to the benefits of this agreement.

Whenever and as soon as such percentages respectively as it may deem sufficient of the outstanding bonds and stocks of the New York Company and of the Riverside Company shall have been deposited hereunder, the committee may declare and certify that this plan is operative; provided, however, that if for any reason there shall not have been deposited hereunder within sixty days from the date hereof such sufficient percentage as above recited of the outstanding bonds and stock, then this agreement shall be declared inoperative, and the securities deposited hereunder shall, on demand, without expense to the holders of the certificates issued hereunder, be returned to said holders on production of their respective certificates of deposit for cancellation.

Third. The committee may take any action under the mortgage to the Trust Company, or the mortgage to the Trust Company of New York, or upon any bonds so deposited which the depositors or any of them could have taken, and may cause the proceedings now instituted for the foreclosure of the New York Company's said mortgage to be continued, and may institute proceedings for the foreclosure of the Riverside Company's said mortgage, and shall have power to bid in or purchase the property or franchises, or both, of the New York Company or Riverside Company, or both, or any part thereof, at any sale of the same, and generally to exercise all the powers which the holders of the certificates of deposit to be issued hereunder, or any of them, might exercise singly or collectively as bondholders or stockholders, and to use, if necessary, the bonds and stocks deposited hereunder, for the purpose of acquiring said properties and franchises, or any part thereof, and to pay therefor such amounts as in its judgment may be necessary to protect the interest of the certificate holders.

Fourth. The committee shall cause a new railroad corporation to be formed under the laws of the state of New York, empowered to acquire title to the properties and franchises of the New York and Riverside Companies. Said corporation shall have a capital stock of \$, which shall be divided into \$ of four per cent. noncumulative preferred stock, and \$ of common stock. The new company shall issue bonds payable in gold in thirty years to the amount of not more than \$, with interest at the rate of five per cent. per annum, from such date as shall be fixed by the committee, also payable in gold, which shall be secured by a first mortgage on the property and franchises of said new company then owned or thereafter to be acquired, except as to the property formerly of the Western Street Railway Company, as to which (if acquired by the new company), it shall be a second mortgage. The new company shall also issue bonds, payable in gold in thirty years, to the amount of \$, with interest at the rate of three per cent. per annum, from such date as shall be fixed by the committee, also payable in gold, which shall be secured by second mortgage on the property and franchises of said new corporation then owned or thereafter to be acquired, except as to said Western Street Railway property (if so acquired), as to which it shall be a third mortgage.

Fifth. The committee shall cause the transfer to said new corporation of the properties and franchises of the New York Company and Riverside Company acquired by it, and, immediately upon the transfer and conveyance to the said new corporation, said corporation shall issue and deliver to the committee its second mortgage bonds and preferred and common stock to the amounts above specified, and shall execute to a trustee a mortgage securing the said bonds, as above specified; and the new company shall also issue its first mortgage bonds to an amount not exceeding \$ _____, and a mortgage to secure the same, as above specified.

Sixth. Said bonds and stocks are to be used for the following purposes:

(1) *First mortgage bonds:*

There shall be sold as hereinafter provided, and the proceeds applied to reconstruction and betterments of the railroad properties, or to acquire, compromise, or pay such of the outstanding debts and other obligations of the New York Company and the Riverside Company, and of the receiver, as may be determined by the committee, or for the expenses of reorganization and the purposes of the new corporation \$

There shall remain to be disposed of by the new corporation, for its purposes or the purposes of the committee, but only when and upon such terms as shall be fixed by the consent of all of the directors of the new corporation who shall be present at a meeting of which at least five days' notice shall have been given, stating the objects of the meeting, so much as shall be deemed from time to time advisable of

Total \$

(2) *Second mortgage bonds:*

To the depositing bondholders of the New York Company, par for par of principal, so much as shall be necessary of \$

To the depositing bondholders of the Riverside Company, so much as shall be necessary of

The remainder of said bonds may be used for the purposes of the committee, or of the new company

Total issue \$

(3) *Preferred stock:*

To be delivered with the second mortgage bonds, fifty per cent. of the par of each bond \$

Total issue \$

(4) *Common stock:*

| | |
|---|----|
| To be delivered with the second mortgage bonds, twenty-five per cent. of the par of each bond..... | \$ |
| To be sold or used by the reorganization committee to acquire, compromise, or pay such of the outstanding debts as may be determined by the committee of the New York Company and the Riverside Company and the receiver, or for expenditures on the railroad properties, or for the expenses of reorganization, or for the purposes of the committee or of the new company | |
| Total issue | \$ |

The bonds and stocks to be delivered to depositing bondholders, as above provided, shall be in such proportions that holders of certificates of deposit of the New York Company's bonds shall be entitled to receive for each \$500 of New York Company's bonds, as follows:

| | |
|---|-------|
| (a) Second mortgage bonds of the new company of the par value of | \$500 |
| (b) Certificates for the preferred stock of the new company of the par value of | 250 |
| (c) Certificates for the common stock of the new company of the par value of | 125 |
| | \$ |

The bonds and preferred stock and common stock of the new company to be distributed, as above provided, to the bondholders of the Riverside Company, shall be distributed among such respective bondholders as shall be determined by the committee.

Seventh. The \$ of first mortgage bonds to be sold as aforesaid, shall, under the direction of the committee, be offered for subscription to the depositing bondholders of the New York Company at ninety per cent. of their par, and each depositing bondholder of the New York Company shall have the right to subscribe within thirty days from the deposit under this agreement of his bonds for such an amount of said first mortgage bonds as he may desire, subject to the right of the committee to reject or reduce subscriptions in case of over-subscription.

The committee shall cause the sale of said \$ of first mortgage bonds to be underwritten at ninety per cent. of their par, and members of the committee may become underwriters.

Eighth. The \$ of common stock to be sold or used by the reorganization committee as aforesaid, shall, under the direction of the committee, be offered for subscription to the depositing stockholders of the New York Company and of the Riverside Company, at twenty-five per cent. of its par; and each depositing stockholder shall have the right to subscribe at the time of the deposit of his stock for such an amount of said new common stock as he may desire, subject to the right of the committee to reject or reduce subscriptions in case of over-subscription.

Ninth. The committee is authorized and empowered to use and apply the balance, if there be any, of the second mortgage bonds, stocks, and cash herein provided for, or any part thereof, for the purpose of paying interest or other fixed charges on the property, the expenses of reorganization, the compromise and adjustment of claims against the New York Company, or the Riverside Company, or for such other purposes as it may deem necessary to enable it to carry out the plan of reorganization, and to sell or otherwise dispose of such bonds and stocks upon such terms and conditions, and at such rates as it shall deem proper.

Tenth. The committee shall, in the distribution of the new securities, have power to provide for and make such issues of convertible scrip as shall be necessary to properly represent any fractional interest in said new securities.

Eleventh. The committee is vested with full power and authority to do any and all acts and things necessary and proper in its judgment to be done to carry out this plan, including the power from time to time to make such changes in the same as it may deem expedient or necessary, except that no change shall be made in the plan as to the distribution of securities without the consent of each member of the committee. It shall give notice of any proposed change of this plan by filing a copy thereof with the trust company, and by advertising the substance thereof in one newspaper published in the city of New York, and one published in the city of _____, N. Y., at least once a week for three weeks, and any bondholder or stockholder who shall not dissent from such change and withdraw his bonds or stocks within one week after the completion of such advertisement, shall be deemed to have assented to such change, and shall be in all respects bound thereby. It shall have power to prescribe the form of the new securities and certificates of stock. It may construe the foregoing plan of reorganization, and its construction of the same shall be final, and it may supply defects and omissions in said plan necessary in its opinion to carry it out properly and effectively, and it shall be the judge of such necessity. It shall have power to add from time to time to the number of its members, and to fill any vacancy occasioned by death, resignation, or otherwise. It may act by a majority of the members either at a regular or special meeting convened on notice by its chairman, or by writing signed by such majority, without a formal meeting. It may in its discretion extend any time fixed or limited for the deposit of bonds or stocks, or the payment of subscriptions, or both, but such action shall not be taken, nor shall anything in this agreement contained be taken, to confer or establish any right or privilege upon or in favor of any other non-assenting bondholder or stockholder. If necessary, in its judgment, it may provide funds for the purpose of carrying this agreement into effect by means of loans on such terms as it may deem proper, and pledge as security therefor, all or any part of the bonds or stocks deposited hereunder, or the new securities to be issued therefor.

Twelfth. The committee assume no responsibility for the execution of the above plan, or any part thereof. The members, however, undertake in good faith to execute the same. They shall not be personally liable in any case for the acts of each other, nor for their own, except in the case of a wilful malfeasance or of gross negligence, nor shall they be personally liable for the acts of their agents or employees. They or any of them may become pe-

cularly interested in any of the property or matters which are the subject of this agreement, and they shall be allowed their expenses for counsel fees and otherwise, and a reasonable compensation for their services. Any member may at any time resign by notice in writing to the other members.

Thirteenth. If, by reason of legal or other objections, any of the provisions of this agreement cannot be strictly performed by the committee, then it shall conform as nearly as may be to such provisions, and the committee shall within one year after the organization of the new company file its accounts with the board of directors of the same. Such accounts shall be binding and conclusive upon all parties to this agreement. The assent or approval of the committee, or a majority thereof, shall be sufficient authority to the Trust Company for whatever may be done by it in the premises, including the delivery or payment to or upon the order of the committee of the bonds or stocks deposited or cash contributed hereunder.

Fourteenth. The deposit of bonds or stocks and the receipt of a certificate issued therefor shall have the same effect as if the holder of such certificate had actually subscribed this agreement.

IN WITNESS WHEREOF, the said parties have hereunder set their names, the day and year first above written.

A. B.,

C. D.,

E. F.,

Committee.

EXHIBIT A.

Trust Company hereby certifies that it has received from _____, the first mortgage bonds, certificates for the shares of the capital stock, of New York Street Railway Company or Riverside Railway Company, and certificates of the _____ Trust Company, for the deposit of first mortgage bonds of the New York Street Railway Company, respectively, as herein specifically enumerated, viz.:

- \$ New York Street Railway Company, \$500, six per cent. first mortgage bonds, with all unpaid coupons attached, due on and after _____.
 - \$ Shares of the capital stock of New York Street Railway Company.
 - \$ Riverside Railway Company's \$500, six per cent. consolidated mortgage bonds, with all unpaid coupons attached, due on and after _____.
 - \$ Shares of the capital stock of Riverside Railway Company.
- Certificate of deposit of _____ Trust Company, pursuant to a certain agreement between A. B., G. H., and R. T. and certain holders of bonds of New York Street Railway Company, dated October _____, 189 _____, for the deposit of \$ _____ of the first mortgage bonds of said New York Street Railway Company.

To be held by the undersigned and used under and subject to the conditions of a certain agreement, dated _____, _____, by and between A. B., C. D., and E. F., constituting the reorganization committee of the bondholders and stockholders of the New York Street Railway Company, and the Riverside Railway

Company, and the respective bondholders and stockholders of said companies who assent thereto, to which agreement the holder hereof, by receiving this certificate, assents and becomes a party, and agrees to be bound by the provisions thereof.

The holder hereof will be entitled to the benefits of said agreement upon the surrender of this certificate, properly indorsed.

Dated, New York, , .

TRUST COMPANY.

By .

709. Underwriting Agreement.

AGREEMENT made the day of , , between (hereinafter called the underwriters), parties of the first part, Trust Company, of the city of New York, a corporation organized and existing under and by virtue of the laws of the state of New York (hereinafter called the trust company), party of the second part, and A. B. & Co., doing business as bankers in the city of New York (hereinafter called the bankers), parties of the third part.

WHEREAS, the bankers have purchased and recently consolidated the properties known as the A. B. Electric Railway Company of , and the C. and D. Electric Railway Company, merging the same into a new company under the name of the B. and D. Electric Railway Company; and,

WHEREAS, the trust company is about to make a loan of dollars to the said B. and D. Electric Railway Company, which loan is to be evidenced by the promissory note of the said B. and D. Electric Railway Company, indorsed by said A. B. & Co., and payable in one year from the date of this agreement, with interest at per centum per annum, payable quarterly in advance; and,

WHEREAS, said loan is to be secured by of the bonds of the said B. and D. Electric Railway Company, with shares of the capital stock of the said company, said bonds and stock being now owned by said A. B. & Co.; and,

WHEREAS, the underwriters are desirous of purchasing certain of said bonds of the B. and D. Electric Railway Company held under said loan:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the underwriters, in consideration of one dollar and other valuable considerations, the receipt whereof is hereby acknowledged, do each for himself or themselves, and his or their heirs, executors, and administrators, and not for the others, agree with the trust company that after the day of , , and on or before the day of , , the said underwriters will purchase, upon the demand of the trust company, the number of bonds of one thousand dollars par value each of said B. and D. Electric Railway Company, now in possession of the trust company, and the number of shares of said stock of one hundred dollars par value, set opposite their respective names, and pay therefor the sum of seven hundred and fifty dollars for each bond, together with the interest thereon at the rate of five per centum per annum from the due date of the last unattached coupon, and for each ten shares of stock set opposite their respective names, and will respectively pay their proportionate amount of overdue interest, if any, that may be due upon said loan after crediting the amount paid as aforesaid upon said coupons.

Each underwriter agrees that the trust company shall have the right to reduce the subscription of any underwriter, and to make allotment in any case of less than the number of bonds subscribed for. In the event that a less number of bonds than is subscribed for shall be allotted in any case, the underwriter or underwriters to whom such less number of bonds may be so allotted, agrees that he or they will take and pay for such less number of bonds at the same price per bond, and upon the same terms of payment as those mentioned above.

In case of the failure of the underwriters, or any of them, to take and pay for the said bonds at the times and as provided in this agreement, the holder of said note of said B. and D. Electric Railway Company may, without further demand or notice, sell, assign, or deliver the whole or any part of said securities not so taken and paid for, at any brokers' board, in the city of New York, or elsewhere, or at public or private sale, at their option, at any time or times thereafter, without advertisement or notice, and the trust company shall have the right to become purchasers thereof at such sale or sales, freed and discharged from any equity of redemption; and the underwriters severally agree that all interest, and legal or other costs, charges, or expenses may be deducted from the proceeds of such sale, and the residue applied on the liability or indebtedness of such defaulting underwriter under said note and this agreement; the overplus, if any, to be returned to the company, and if there shall be any deficiency, the several underwriters hereby promise to pay the same so far as it may arise under their own subscriptions or default, and not otherwise.

The underwriters each further agree that the bankers shall have the right to purchase from or through the trust company at any time on or before _____, 19____, all or any part of the bonds for which the underwriters have subscribed, at the price of not less than seven hundred and fifty dollars and accrued interest per bond, and each ten shares of stock, but in such event the trust company shall apply seven hundred and fifty dollars and accrued interest per bond for the bonds and stock so sold, to the payment of the loan mentioned herein, and in the event that the bankers shall purchase all of the said bonds and stock hereby allotted to the said underwriters under the terms of this agreement, then and in that event the underwriters are hereby released from all further liability in the premises, and the trust company hereby agrees to notify them of such release.

The trust company agrees that upon payment at any time after _____, 19____, and on or before _____, 19____, of said sum of seven hundred and fifty dollars per bond and the accrued interest thereon hereunder, it will deliver or cause to be delivered to the person entitled thereto respectively the number of said bonds and the number of said shares of stock now in its possession, for which the underwriters have respectively subscribed or which may have been allotted respectively hereunder, less their several respective proportions of any bonds and stock that may have heretofore been purchased by the bankers, as hereinbefore provided.

It is understood and agreed that each underwriter shall be liable only for and upon his own subscription or default, and not for or upon the subscription or default of any of the others.

IN WITNESS WHEREOF, the trust company has caused this agreement to be

subscribed by its president, and its corporate seal to be hereunto affixed, and the underwriters and said A. B. & Co. have hereunto subscribed their names this day of , 19 .

[Signatures and seals of trust company and bankers.]

UNDERWRITERS.

| NAME. | Number of bonds. | Number of shares of stock. | Amount. |
|------------------------------------|------------------|----------------------------|---------|
| <i>Signatures of underwriters.</i> | | | |

710. Contract with Bankers on Purchase and Sale of Stock.

NEW YORK, , 19 .

Messrs. A. B. & Co.:

GENTLEMEN:—WHEREAS, of , am about to open and keep a series of accounts of various natures and amounts with your firm as bankers and brokers in the city of New York, I hereby agree, in consideration of the premises and of the sum of one dollar to me in hand paid by your said firm, the receipt whereof is hereby acknowledged, that all existing and all future transactions between us shall be upon the following basis and terms, viz.: that in case your said firm, upon this or any other market and upon written or verbal orders from me, shall purchase or sell for me or on my account any stocks, bonds, securities, exchange, property, or things in action, upon a margin paid or to be paid by me, or in case your said firm shall advance any sum or sums of money from time to time in or towards the paying for any stocks, bonds, securities, exchange, property, or things in action, purchased by you upon my order, or for my account, or for the payment of any checks or drafts made or drawn by me, or for any loans or payments to me, or for my account or use; or in case that I am now indebted or shall become or be at any time indebted to you on any account whatever, for any deficiency or deficiencies arising out of contracts or transactions in or relating to stocks, bonds, securities, exchange, property, things in action, or collaterals; that then, and in either of said events, your said firm of A. B. & Co. may sell, and I hereby authorize and empower you to sell in your discretion at any of the brokers' boards, or elsewhere, or at public auction, or private sale (upon five days' notice to me), and with or without advertising the same, and without prior demand of any kind upon or notice to me, except as aforesaid, of the time and place of sale, all or any stocks, bonds, securities, exchange, property, things in action, or collateral heretofore or hereafter received, and held by you and belonging to me, or in which I may be in anywise interested, whether the said stocks, bonds, securities, exchange, property, things in action, or collaterals shall be held by you on the same or any other account; and I hereby authorize your said firm of A. B. & Co. to apply the proceeds of any such sale or sales towards the repayment of such advances, or deficiencies, or indebtedness, and the interest thereon, together with the commissions and expenses of the said sales or negotiations, whether incurred upon the same or any other account; I hereby holding my-

713. Contract Giving Right to Call or Put Stocks (a Spread).¹

NEW YORK, , 19 .

FOR VALUE RECEIVED, the bearer may call on the undersigned for shares of the , at per cent., any time in days from date.

Or, the bearer may, at his option, deliver the same to the undersigned at per cent., any time within the period named.

All dividends or extra dividends declared during the time are to go with the stock in either case, and this instrument is to be surrendered upon the stock being either called or delivered.

Expires , , at M.

714. Agreement for Purchase of Coin, etc., at the Seller's Option.

[Date.]

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., for and in consideration of the sum of dollars, good and lawful money of the United States, to me in hand paid by D. E., the receipt of which is hereby acknowledged, do agree to receive from said D. E., at any time within from date, he may choose to deliver the same two thousand five hundred dollars in gold coin of the United States, for which I agree to pay to the said A. B. ninety-five per cent. premium on the dollar, or at the rate of one hundred and ninety-five dollars in good current funds, for each and every one hundred of coin. The said D. E. does not contract to deliver the coin, but pays the two hundred and fifty dollars for the privilege of delivering or not, at his option.

A. B.

715. Memorandum on a Sale of Wheat.

IT IS AGREED by and between A. B. and C. D., of , that he, the said C. D., in consideration of bushels of wheat sold to him this day by the said A. B., and by him agreed to be delivered to the said C. D., free of all charges and expenses whatsoever, at , on or before the , next, shall and will pay, or cause to be paid, to the said A. B., or his assigns, within three months after such delivery, the sum of .

And the said A. B., in consideration of the agreement aforesaid, of the said C. D., doth promise and agree, on or before aforesaid, at his own proper expenses, to send in and deliver to the said C. D., or his assigns, the said bushels of wheat so sold him as aforesaid, and that he, the said A. B., shall and will warrant the same to be good, clean, and merchantable grain.

IN WITNESS WHEREOF, etc.

A. B.,

In presence of

C. D.

716. Contract in Relation to the Prosecution of an Assigned Claim.

THIS AGREEMENT, made this day of , 19 , between F. B., party of the first part, and F. L., party of the second part:

WHEREAS, the said party of the second part has, by an instrument in writing bearing even date herewith [*Form No. 262, ante*], duly sold, assigned, transferred, and set and delivered over unto the said party of the first part, his executors, administrators, and assigns, certain claims and demands, and causes

¹ Where the combined "put" and "call" (*e. g.*, 80 per cent.), the contract is called a "straddle." When they are the same price "spread."

of action, against A. B., A. C., A. B. & Co., the _____ Company, a corporation, and others, arising out of certain transactions in connection with the capital stock of the _____ Company, a corporation, created and existing under and by virtue of the laws of the state of _____, and for any assessment or assessments paid thereupon, as will by reference to said assignment more fully appear:

NOW THIS AGREEMENT WITNESSETH: That the said party of the first part hereunto, for and in consideration of the said premises, and of other good, valuable, and sufficient considerations, to him in hand duly paid and moving, the receipt of which is hereby acknowledged, doth hereby, for himself, his executors, administrators, and assigns, covenant and agree to pay over to the said party of the second part, his executors, administrators, or assigns, _____ per centum of any sum, amount, or proceeds which may be received, collected, realized, or obtained by said party of the first part, in, or by, or from any action or suit at law or in equity for, or on any compromise of, said claims and demands.

And the said party of the second part, in consideration of the premises, for himself, his executors, administrators, and assigns, doth hereby covenant and agree, that he or they will pay to the said party of the first part, his executors, administrators, or assigns, upon demand, any and all sum or sums of money which the said party of the second part, his executors, administrators, or assigns, may become liable for, or may be compelled to pay or expend for the taxable costs, disbursements, or allowances of the defendants, or so much thereof as may be incurred upon said claim, in any suit or action which may be brought by the said party of the first part, for the purpose of enforcing or collecting the said claims, and will fully indemnify and save harmless the party of the first part therefrom.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

In presence of

[Signatures and seals.]

[Acknowledgment.]

717. Contract Annulling Conveyance.

THIS MEMORANDUM, made this _____ day of _____, A. D. 19____, WITNESSETH, that,

WHEREAS, heretofore we, W. A. P., and H. W. P., his wife, did convey by deed or deeds, to W. W. and S. M., certain lands situate in the county of _____, in the state of _____, as by the said deed or deeds, or the records thereof, in the office of the register of said county of _____, will more fully appear; and,

WHEREAS, by a certain declaration of trust made and executed by the said W. W. and S. M., on the _____ day of _____, A. D. 19____, it was declared and made known that the said W. and M. held the said lands IN TRUST for themselves and one A. P., and the said W. A. P., their heirs and assigns, in the proportions, and upon the trusts, conditions, provisions, and agreements in the said declaration of trust particularly specified and contained, as by reference thereto will more fully appear; and,

WHEREAS, in or about the month of _____, 19____, upon request of parties entitled to interests in the said lands, under and by virtue of said declaration of trust, a partition or division of the said lands was sought and attempted to be made, and in pursuance thereof certain deeds of conveyance to the par-

ties in interest were made and executed by the said W. W., and S. M., his wife, bearing date the day of , A. D., 19 , for certain portions in severalty of, in and to the said lands; and,

WHEREAS, two of the said deeds of conveyance, one to the said W. W., and one to T. A. C., and which purported to convey in severalty to said W. and C. certain portions of the lands mentioned and described in the said declaration of trust, came to the hands of said W. and C., respectively, and were by them caused to be recorded in the office of said register of said county of ; and,

WHEREAS, it is now claimed by some of the parties in interest that all the parties in interest have not assented or agreed to said attempted partition or division of the said lands, or to the said two deeds of conveyance, or either of them, and that the said attempted partition or division of the said lands, and the said two conveyances were and are wholly null, void, and of no effect; and,

WHEREAS, it is now desired by the same parties to restore the legal title and estate of, in and to the said lands as it was before the said attempted partition or division thereof, and the said two deeds of conveyance, and to cancel the said two deeds of conveyance, to the end that all the parties who, under or by virtue of the said deed from said P. and wife to said W. and M., or the said declaration of trust, possessed, prior to the said conveyances to said W. and C., any trust estate, or any right, title, or interest, benefit or advantage in or to the said lands, or any part thereof, may be restored to, and re-instated in the same, in the same manner, and to the same extent, and with the same force and effect, precisely, as if such conveyances to said W. and C. had never been executed or delivered.

Now, THEREFORE, in consideration of the premises (and of the request made to us by other parties in interest in said lands, so to do), and for the purpose and to the end aforesaid, we, the said W. W., and M., his wife, and the said T. A. C., do hereby consent and allow that the said attempted partition and division of the said lands so as aforesaid sought to be made, and the said two conveyances to us above mentioned, were and are null and void, by reason and on account of the want of the concurrence and consent thereto of all the parties interested in the said lands, under the said declaration of trust, and also that we hold the lands so conveyed to us in and by the said two deeds to us, subject to the same trusts as are mentioned in the said declaration of trust, and not discharged therefrom; and we do therefore hereby agree to surrender and deliver up, and upon the happening of each and every of the contingencies and conditions hereinafter mentioned, we do hereby surrender and deliver up the said conveyances, and do hereby agree to grant, quitclaim and release, and upon the happening of each and every of the contingencies and conditions hereinafter mentioned, we do hereby grant, quitclaim, and release to the said W. W., and S. M., as such trustees as aforesaid, the lands and property described in and purporting to be conveyed in severalty to us by the said two deeds of conveyance.

TO HAVE AND TO HOLD the same to the said W. W. and S. M., as such trustees as aforesaid, and subject to all the trusts, provisions, conditions, and agreements in the aforesaid declaration of trust specified and contained, and so that the legal title and estate in and to the whole of the lands so as aforesaid conveyed by said W. A. P. and his wife to said W. and M., may be revested in said W. and M. as such trustees as aforesaid, and may be by them held, managed,

and disposed of in accordance with the terms of said declaration of trust, as fully and with the like force and effect, in every respect, as if the said two deeds of conveyance unto us, dated the day of , 18 , had never been executed; and also that we, the said W. W., and the said T. A. C., and each of us, may and shall have, retain, possess, and enjoy the same rights, interests, equities, benefits, advantages, and trust estate, of, in and to all the said lands so conveyed by said P. and wife to said W. and M., and mentioned in the said declaration of trust, as if the said two deeds of conveyance unto us had never been executed or delivered unto us, or either of us.

But it is hereby expressly provided, understood, and agreed, that this indenture shall not be of any force or effect whatsoever, but the same shall be in every respect null and void, until, and except upon the happening of the conditions and contingencies hereinafter expressed and contained, and each of them, viz.:

1. That this instrument shall be executed and delivered by all the parties thereto, that is to say: By the said W. W., and M., his wife, and by the said T. A. C., as well as by the said W. W. and S. M., as such trustees, as aforesaid.

2. That a certain indenture of mortgage, made and executed by the said T. A. C. to H. W. B. and H. T. P., and bearing date the day of , A. D., 18 , and which was recorded in the office of said register of said county of , on the day of , A. D., 18 , in liber of Mortgages, page , etc., shall be by the mortgagees therein, their representatives and assigns, duly canceled and discharged.

And we, the said W. W., and S. M., do sign, seal, execute, and deliver this instrument, and do hereby consent and agree that we receive the same for the uses and purposes hereinbefore mentioned and expressed; and we are to hold and possess the legal title and estate of, in and to the lands so as aforesaid granted, quitclaimed, and released unto us by said W. and wife, and said C., in the manner and for the purposes and upon the terms, trusts, provisions, conditions, and agreements in the aforesaid declaration of trust specified and contained, as fully to all intents and purposes as if the same were here again repeated and set down.

IN WITNESS WHEREOF, the parties hereunto have hereto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of [*Signatures and seals of parties.*]

718. Underwriting Agreement.

THE A. B. SHIPBUILDING COMPANY.

A corporation to be organized under the laws of the state of New Jersey, either by that or some similar name, proposes to acquire the plants and equipment, of the following concerns or their capital stocks, free from any liens:

THE S. IRON WORKS, Philadelphia, Pa.

THE B. IRON WORKS, Limited,

and

THE J. WINDLASS COMPANY, Boston, Mass.

THE C. SHIP YARD

and

THE M. COMPANY, New York City, N. Y.

THE E. SHIPBUILDING COMPANY, Portland, Maine.

THE H. & H. COMPANY, Wilmington, Del.

and

THE C. MANUFACTURING COMPANY, Hoboken, N. J.

For \$9,000,000 Series A First Mortgage, Five Per Cent. Sinking Fund, Gold Bonds, due 1932, part of an authorized issue of \$16,000,000, bonds of \$1,000 each, \$5,500,000 being withdrawn from public issue for disposal under the vendors' and subscribers' contracts, and \$1,500,000 being reserved in the treasury of the company. Additional bonds may be issued only for the purpose of acquiring additional plants and equipment and for improvements and betterments, upon such terms and conditions as shall be approved by the holders of a majority of the bonds under the present issue outstanding at the time of such approval.

We, the undersigned, agree, each for himself, with The M. Trust Company, for itself and for the A. B. Shipbuilding Company, and to and with each other, to subscribe to, receive and pay for the amount of five per cent. first mortgage, sinking fund, gold bonds of the A. B. Shipbuilding Company of one thousand dollars each, set opposite our respective signatures hereto, at the price of \$900 for each bond, 25 per cent. to be paid upon allotment and the balance upon the demand of The M. Trust Company.

We further agree to receive and pay for any smaller amount than that subscribed for which may be allotted to us respectively.

The conditions of this underwriting agreement are as follows:

(1) That this agreement shall not be binding upon the undersigned unless the entire amount of \$9,000,000 of bonds shall have been underwritten.

(2) That within such reasonable time as shall be fixed by The M. Trust Company the said \$9,000,000 of bonds (less any amount withdrawn by the underwriters as hereinafter set forth), will be offered to the public, through such banker or bankers or brokers as shall be designated by The M. Trust Company, for subscription at not less than 95%.

(3) With the consent of The M. Trust Company, any other concern may be included in this combination, or others substituted therefor, provided the working efficiency or values are not lessened or impaired.

(4) That, if the amount of bonds subscribed and paid for upon such public issue shall be at least equal to the amount of bonds so offered to the public, then all liability under this agreement shall cease.

(5) That, in case the amount of bonds subscribed for upon such public offering shall be less than the total amount of bonds so offered to the public, or in case the bonds subscribed for upon such public issue shall not be paid for to an amount equal, at the rate of 95%, to the total of such public offering, then such deficiency in subscriptions and payments will, upon the demand of The M. Trust Company, be made good by the subscribers hereto in the manner aforesaid *pro rata* in the proportion their subscriptions for bonds not withdrawn by them from public issue bear to the total amount of bonds so offered to the public.

(6) That each underwriter shall receive in preferred and common stock of the A. B. Shipbuilding Company, twenty-five per cent. of the par value of the bonds hereby underwritten in each kind of stock, and also that all the proceeds, not to exceed 5%, realized from the sale of the bonds at public issue in excess of 90%, after deducting issue expenses, shall belong to the underwriters.

(7) That any underwriter shall have the option of withdrawing from the public issue any of the bonds hereby underwritten by him, provided that he notify The M. Trust Company five days prior to the date fixed for the public issue, that he elects to purchase said bonds, provided that in the proportion of the bonds so purchased he waives his said right to participate in the cash proceeds realized from the public issue.

(8) That no underwriter shall sell or offer for sale the bonds so purchased, nor any of the bonus shares of stock he receives, until twelve months after the date of payment, without the consent of The M. Trust Company.

NEW YORK, April , 19 .

| | | |
|-------|----------|------------------------|
| Name. | Address. | Bonds underwritten. |
|-------|----------|------------------------|

719. Agreement for Bondholders' Protective Committee.

THIS AGREEMENT, made this first day of March, one thousand nine hundred and (19), by and between such of the owners and holders of the bonds of the Jones Milling and Export Company as may become parties hereto by signing this agreement and by depositing their securities as herein provided, hereinafter called the "bondholders," parties of the first part, and J. O. G., E. T. D., C. L. U., C. D. and A. B., all of , and their successors, who are hereby constituted a committee representing such bondholders, hereinafter called the "Committee," parties of the second part, WITNESSETH:

WHEREAS, the Jones Milling and Export Company has made default in the payment of interest upon its bonds; and

WHEREAS, by reason of such default and of the advisability of immediately investigating the affairs of the company and taking such steps as may be found necessary to prevent permanent damage to and waste of the security of the bonds, it is deemed advisable by the holders of the above mentioned bonds, parties hereto of the first part, to combine for the mutual protection of their respective interests, for the purpose of maintaining a wise administration of the estate, and, if necessary, for a wise rehabilitation thereof, and in general to obtain the benefits and advantages likely to result from a concerted action of the holders of such bonds; and

WHEREAS, J. O. G., E. T. D., C. L. H., C. D. and A. B have consented to act as such Committee for the purpose of carrying out this agreement;

Now, THEREFORE, the undersigned holders and owners of the bonds of the Jones Milling and Export Company, in the respective amounts set opposite their respective names, or as specified in the letter of remittance accompanying their bonds to be deposited under this agreement, in consideration of the premises, and of the advantages and benefits which will accrue to them respectively from a union of interests and a combination of action to pro;

tect and enforce their rights, and of one dollar, (\$1.00) each to the other interchangeably in hand paid, do hereby, each for himself and not one for the others or any of the others, agree with each other and with the Committee and its successors, as follows, that is to say:

First. A counterpart of this agreement signed by the Committee, and lodged with The Trust Company of the city of Philadelphia, said The Trust Company being hereby designated and appointed the depository of the Committee, shall be held and taken to be the original agreement.

Second. (a.) The bondholders shall, on or before the first day of April, 19 , deposit hereunder all bonds owned by them, together with the unpaid coupons, with the said depository, subject to the order and full control of the Committee, the depositors of such bonds and coupons transferring to the Committee the full legal and equitable title thereto for the purposes of this agreement; the bondholders to receive for securities deposited under this agreement negotiable certificates to be in form approved by the Committee and to specify the number of the bonds deposited. Bondholders depositing their bonds, and their transferees, shall, by accepting such certificates, become parties to this agreement, with like effect as if they had signed the same. Each receipt or certificate of deposit may be treated by the Committee and by the depository as a negotiable instrument and the holder for the time being may be deemed to be the absolute owner thereof, and of all rights of the original depositor of the bonds and coupons; and neither the depository nor the Committee shall be affected by any notice to the contrary. Depositors must in all cases deposit with their bonds such transfers, assignments and powers of attorney as may be required by the Committee in order to vest in the Committee, and to enable them to transfer the complete and absolute title to such bonds and coupons and the depositors respectively agree at any time to execute any and all transfers, assignments or writings necessary for vesting complete ownership of the bonds and coupons deposited hereunder in the Committee or its nominees, for the purpose of enabling the Committee to carry out this agreement or any plan of reorganization which may be prepared and adopted in pursuance of this agreement.

(b.) After the first day of April, 19 , no bondholder who shall not have complied with the provisions of this agreement by depositing his holdings as aforesaid, shall have or be entitled to have any of the rights or privileges herein provided for, and shall not be entitled to participate in any way in the benefits of this agreement; provided, however, that the Committee shall have power at any time to permit any holder of bonds to receive the benefits of this agreement upon compliance with the terms hereof, upon such just and reasonable terms and conditions as the Committee shall deem proper.

(c.) The Committee, or a majority thereof, as at any time constituted, acting collectively (except as hereinafter provided), are hereby appointed and constituted by the bondholders, their agents and attorneys, and the agents and attorneys of each and every one of them, for the purpose of carrying out this agreement. And the bondholders hereby severally confer

upon the Committee whatever power and authority it may be necessary for the Committee to exercise in order legally and effectually to execute this agreement, and they and each of them also constitute and appoint the Committee their true and lawful attorneys irrevocable with power of substitution, to execute in their behalf any instrument or instruments in writing convenient or necessary to enable them to carry out the purpose of, this agreement in all its parts and details, hereby giving and granting unto the Committee full power and authority to do and perform any and every act and thing requisite or necessary in the premises as fully to all intents and purposes as the consenting bondholders personally might or could do, hereby ratifying and confirming all that the Committee shall lawfully do or cause to be done by virtue hereof. The enumeration of specific powers conferred by any part of this agreement shall not be held to restrict or exclude others not enumerated, but the Committee shall have all powers necessary or convenient for the promotion, execution or accomplishment of any of the general purposes mentioned or intended to be included in this agreement, even though such powers be apparently of a character not now contemplated.

(d.) The Committee may construe this agreement, and their construction thereof or action thereunder in good faith shall be final and conclusive. They may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as shall be necessary to carry out the same properly and effectively, and they shall be the sole judge of such necessity.

Third. The Committee, as holders of the deposited securities, may take any action under the mortgage or deed of trust securing the bonds, or in respect to any suits or proceedings to foreclose the same, including the power to buy in the property on such foreclosure, and to pay therefor or to make part payment of the purchase price thereof in the bonds and coupons deposited hereunder; to represent the bondholders in any court or elsewhere in respect to their rights and interests as holders of the bonds; to instruct and direct the trustee of the mortgage or deed of trust securing the bonds, and to confirm in and to give such trustee all such powers as in the judgment of the Committee shall result to the advantage of the bondholders; to receive moneys payable upon such bonds and to use such moneys in the discretion of the Committee to carry out the purposes and intent of this agreement, being especially authorized to employ agents, attorneys and counsel, and to pay reasonable compensation for all services rendered to the Committee, and being especially empowered to employ any of their own number, or any firm of which any of their own number may be a member, or with which he may be associated to act as their agent for the raising of money, or otherwise, and to pay such member of such firm reasonable compensation for such services, in all respects as though such person were not a member of the Committee; any member of the Committee may acquire any securities, outstanding titles, obligations or claims of any sort against the company, and may hold them individually for the protection of his own interests, it being expressly agreed that the trust relation created by this agreement shall not be construed as prohibiting such holding; provided, however, that any such securities, outstanding titles, obligations or claims so acquired by any member of the Committee shall at any time be transferred to the Committee upon request by them, upon payment by the Committee to

such member of whatever sum of money he may actually have paid to acquire the same, together with interest at six per cent. per annum from the time of such payment by him. The Committee shall have power to borrow any money or moneys, if in their judgment it be necessary to carry out the purposes and intent of this agreement, and to use or pledge the bonds of the parties hereto of the first part as collateral for moneys so borrowed. Such Committee, however, shall not have power to create any personal liability on the part of any of the parties hereto for money so borrowed. And, in general, the Committee is authorized and empowered to exercise all other authority, powers and discretion which the bondholders hereto or any of them, might or could exercise as bondholders by reason of the bonds owned by them or of the mortgage securing them, in carrying out the objects and intents of this agreement as understood and construed by the Committee.

Fourth. The Committee shall have power to assess the bondholders to a sum not in excess of one (1) per cent. of the par value of the bonds deposited, for the necessary expenses of the reorganization, and to fix the time of payment of such assessment or assessments. The bondholders agree, each for himself, in respect to each bond deposited by him to make such payment promptly within the time fixed by the Committee. The bondholders hereby severally agree that prompt payment of any assessment made in accordance with this provision is an essential condition to the acquisition of stock or bonds in any new company to be formed, or to a share in the proceeds of any sale of bonds, or to any other benefits whatsoever which may accrue from the reorganization plan. If such payments shall not be made within the time limited by the Committee, it is agreed that without further or other notice or action, those so failing to make payment as aforesaid shall cease to have any rights or to be entitled to any benefits hereunder. The Committee, however, in their discretion may waive any such default and accept payments of overdue assessments from any bondholder at any time before the completion of the work of the Committee. In case of default and forfeiture as aforesaid, the bonds deposited, as well as any assessment already paid, shall vest in the Committee, to be used in the reorganization plan, and for the benefit of the other bondholders. The assessment herein provided for may be made either in one sum or in such portions as the Committee may impose from time to time; all such assessments, however, not to aggregate more than one (1) per cent. of the par value of the bonds deposited.

Fifth. (a.) The Committee shall have power to prepare and adopt a plan of reorganization whenever in its judgment it is advisable to do so. When the Committee shall have adopted such plan, a copy thereof shall be lodged with the depository. Notice shall thereupon be given to the holders of the receipts issued hereunder as in this article fifth provided, and such plan shall become binding upon all the holders who do not withdraw herefrom in the manner herein provided.

Moreover the Committee shall have power to negotiate for a sale of the bonds deposited hereunder as a whole, and in the event of obtaining a bid for said bonds satisfactory to the Committee, said Committee shall thereupon give notice to the holders of the receipts issued hereunder as in this

article fifth is provided, and the Committee shall be fully authorized to make sale at the price mentioned in said notice of all bonds which shall not be withdrawn herefrom in the manner herein provided by the holders of the receipts therefor.

(b.) The notice from the Committee to the holders of receipts shall be given by mailing the same with postage prepaid to the addresses registered by such holders with the depository at the time of depositing the bonds represented thereby; such registered addresses may from time to time be changed by notice in writing delivered to said depository. Any holder of a receipt issued hereunder may at any time within twenty days after mailing to him, or the last publication of, the notice aforesaid, withdraw from this agreement, and be entitled to receive the bonds represented by his receipt upon payment of his *pro rata* share of the expenses heretofore incurred by the Committee as certified by the Committee, such share not to exceed one (1) per cent. of the par value of the bonds deposited by him, and upon the further payment of such holder's *pro rata* of any amount for which the bonds may have been pledged, and of whatever further sum, in addition to this proportional amount of the pledge, may have been imposed on the bonds by the Committee as a condition of the cancellation of the pledge; provided, however, that the holders of such receipts shall be entitled to the return of the bonds pledged only in the event that the Committee is able to obtain such bonds from the pledgee on the payment of such sum, the Committee not being responsible for the return of such bonds; and provided further, that if in the meantime any of such bonds so pledged shall have been sold or disposed of by the pledgee or used in satisfaction of the pledge, in such event the holder shall not be entitled to withdraw from this agreement. Upon the withdrawal of the bonds represented by such receipts, and the payment of the sums herein provided for, the holders of receipts shall be thereupon and without any further act fully released from the obligations of this agreement, and from such plan of reorganization; but as to every holder who shall not, within such period of twenty days, so withdraw the bonds represented by his certificates, his assent to and ratification of such plan or of a sale of the bonds at the price mentioned in said notice, shall be conclusively and finally assumed, conferred and given, and shall be irrevocable.

Sixth. If during the continuance of this agreement the Committee shall wish to submit to the holders of receipts, any question whatever, notice of a meeting of such holders may be given as in article fifth hereinbefore provided, and any such matter or question shall be determined by a vote of a majority in par value of the outstanding receipts, which determination shall be binding on the holders of all outstanding receipts; but the Committee need not call any such meeting or take any such vote unless it desires so to do.

Seventh. In case of a foreclosure or sale of the mortgaged property or any part thereof, the Committee is hereby authorized to purchase the same, or any part of the same, for the benefit and account of the parties hereto, according to the number of bonds represented by their respective receipts, at such price, in addition to the expenses, as such Committee may approve, not, however, exceeding the aggregate amount of the principal and interest at the time due and unpaid upon all the bonds secured by the mortgage or deed

of trust, together with such amount as may be established as a lien upon the property prior to the lien of the mortgage, and the expenses of foreclosure, and to make any arrangement that may be necessary to accomplish such purposes that shall not involve the compulsory assessment of the subscribing bondholders to an amount beyond such sum as shall be necessary to pay the costs and expenses of the foreclosure; but the Committee may borrow money on the security of the bonds (or by any other means not involving the compulsory assessment of the bondholders) with which to pay to the bondholders not uniting in this agreement their *pro rata* share of the purchase price; and to that end the bonds so deposited, and the coupons thereto, or a part thereof, may be used by such Committee in completing the purchase, including the right to pledge the same in borrowing such sum as may be necessary to pay the bondholders not uniting in this agreement as aforesaid, or to secure such sum by creating a prior lien upon the property so purchased. In case the mortgaged premises and property shall not be purchased by the Committee upon any sale, the Committee is authorized to receive the dividends due on the bonds deposited under this agreement from the proceeds of the sale, and distribute the same less the *pro rata* share of the expenses.

Eighth. If the Committee should purchase the mortgaged premises, as hereinbefore authorized, in their names or otherwise, the same may be conveyed to them, or to any persons or corporations designated by them, and they or such appointee may take possession of the same for account and benefit of the parties to this agreement, respectively, and their respective representatives or assigns, according to the amount of the bonds then held by them respectively, to be by the Committee disposed of according to any plan that may be hereafter agreed upon, as above provided, for the reorganization of the property in the event of such purchase.

Ninth. The Committee, as at any time constituted, and notwithstanding any vacancy, shall have all the powers, rights, and interests of the Committee as originally formed. Any member of the Committee may resign by giving notice thereof in writing to the secretary of the Committee or to all the other members. The affirmative vote of a majority of the members of the Committee as at any time constituted, shall be necessary for the passage of any resolution (a member of the Committee may vote by proxy at any meeting of the Committee) and such affirmative vote of the majority shall be taken for every purpose final and as the action of the whole Committee, except that in no event shall any member of the Committee incur any personal liability to any of the bondholders or to any persons, except for his own acts, and not then except for wilful misconduct. It shall not be necessary for the members of the Committee to meet formally in order to take any action, provided they agree unanimously on any matter and embody such action in a writing signed by each member of the Committee. The Committee may fill vacancies in its number; in case the Committee cannot agree on an additional member to fill a vacancy, notice of such vacancy shall be given to the holders of receipts by written notice sent by mail to the addresses registered at the time of depositing the bonds represented thereby, and which registered addresses may, from time to time, be changed by notice in writing delivered to the depository. Such notice shall state the fact of a vacancy

and shall fix a time within which the vote of the holder of the receipt must be received; which date shall not be less than twenty (20) days after the mailing of the notice; such votes of the bondholders shall be received by the depository and the person receiving the highest number of such votes, reckoned according to the par value of the certificates voting, shall, upon his acceptance of the office, become a member of the Committee in all respects as though appointed by this agreement. No member of the Committee shall be personally liable for anything except his own wilful misconduct and each shall be entitled to reasonable compensation for his services. The depository shall incur no liability as depository for anything done or permitted at the request or direction of the Committee, it being intended that the bonds so deposited shall be wholly at the order and under the control of the Committee; the Committee to incur no liability whatsoever except for their own wilful misconduct. All directions or instructions given to or powers conferred upon the depository as depository of the Committee or to the Trustee under the mortgage or deed of trust securing the bonds, shall be binding upon the bondholders, parties hereto, and their assigns, notwithstanding the return of the bonds and the termination of this agreement. The members of the Committee are not personally bound or obliged to carry this agreement into effect, but are only required to do what, in their judgment, seems advisable for this purpose.

Tenth. This agreement may at any time be terminated by a majority vote of the Committee, and upon notice thereof being mailed to the parties of the first part to their several addresses as the same shall appear opposite the signatures to this agreement, or by notification to the depository or at the option of the Committee upon publication of such notice twice a week for two consecutive weeks in a daily newspaper published in the city of Philadelphia; and in such event, the Committee shall, at the expiration of ten days thereafter, be absolutely and forever discharged from all connection with this agreement; and the bondholders shall thereafter be free to take such action in reference to their bonds as they may be advised, and shall be entitled to a return of their securities upon surrender of their receipts in like manner and on the same terms as hereinbefore provided in article fifth hereof, for the ease of bondholders not assenting to the Committee's plan of reorganization. The Committee shall have power to determine and to act according to its judgment in all matters not specifically provided for herein but within the general purposes set out in this agreement, and shall have power to modify this agreement in any matter of detail not affecting the substantial rights of the parties hereto. The accounts of the Committee shall be filed with and audited by the depository and their approval of such accounts shall be final and conclusive, so that the same shall not be questioned thereafter by any of the parties hereto or any one claiming under them or through them, and the Committee shall thereupon be discharged.

Eleventh. The bondholders, parties hereof, of the first part, may become parties to this agreement, either, first, by signing and delivering counterparts thereof to the Committee, or to any one acting for the Committee (in which case the bonds of any person to become a party must be deposited with the Committee as in article second hereof provided); or, second, by

depositing their bonds hereunder with the depository above named as hereinbefore provided in article second hereof; it may be executed in any number of parts, which together shall be deemed to be one instrument.

IN WITNESS WHEREOF, the members of the Committee have hereunto set their hands, and the other parties hereto have set their hands, setting opposite their names the amount of their bonds and their post-office addresses, the day and year first above written.

J. O. G.
E. T. D.
C. L. H.
C. D.
A. B.
Committee.

| Bond No. | Bondholders' Signatures. | Amount of Bonds. | P. O. Address. (Give address as you wish your notices, &c. ad- dressed to you). |
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720. Trust Agreement for Control of Capital Stock of Life Insurance Company.

AN AGREEMENT, made in the City of New York, in the State of New York, this fifteenth day of June, one thousand nine hundred and five, between T. F. R., of the first part, and G. C., M. J. O. and G. W. (hereinafter called the "Trustees"), of the second part.

WHEREAS, the E. L. A. Society of the United States (hereinafter called the "Society"), is a corporation of the State of New York, having a full paid capital stock of one thousand (1,000) shares of the par value of one hundred dollars (\$100) each, of which five hundred and two (502) shares are held by the party of the first part; and

WHEREAS, the corporate powers of the Society are vested by its charter in a board of directors consisting of fifty-two (52) persons, divided into four (4) classes of thirteen (13) directors each, each class serving for a term of four (4) years, so that thirteen (13) directors are elected at each annual election of the Society; and

WHEREAS, the directors of the Society have adopted a plan for the mutualization of the Society by so amending its charter that, of the fifty-two (52) directors of the Society, twenty-eight (28) should be elected by the policyholders and twenty-four (24) by the stockholders; and

WHEREAS, the consummation of said plan of mutualization and formal action thereon by the Superintendent of Insurance of the State of New York have hitherto been prevented by litigation, and in order to effect, so far as practicable, and without further delay, the result sought to be attained by such plan of mutualization, the party of the first part has entered into this agreement with the Trustees:

Now, this agreement witnesseth as follows:

First. The party of the first part hereby transfers to the Trustees said five hundred and two (502) shares of the capital stock of the Society for the

purpose of vesting in the Trustees the right to vote thereon for the term and upon the terms and conditions stated in this agreement. The existing certificates for said stock shall be surrendered and cancelled, and certificates therefor shall be issued to the Trustees, in which certificates it shall appear that the same are issued pursuant to this agreement, and that fact shall also be noted in the entry of the Trustees as owners of such stock in the proper books of the Society.

Second. The Trustees are exclusively authorized to exercise the voting power on the stock held under this agreement for the election of directors of the Society, and shall, at every annual election of directors of the Society, so vote on said stock, that out of every thirteen (13) persons for whom such vote shall be cast, seven (7) shall be policy-holders of the Society, selected in accordance with the wishes of the policy-holders of the Society, expressed as hereinafter provided, and the remaining six (6) directors shall be selected by the Trustees in their uncontrollable discretion, to the end that, of the entire fifty-two (52) directors, twenty-eight (28) shall be policy-holders of the Society, selected by, or on behalf of, the policy-holders, and twenty-four (24) shall be lawfully eligible persons selected by the Trustees in their sole discretion.

The wishes of the policy-holders in respect of the directors to be voted for by the Trustees shall be expressed in the following manner: In each year, at any time prior to the first day of November, any holder of any policy which shall have been in force for one year or more, may send to the Trustees, at the E. Building, No. — Broadway, New York City, a written request, designating policy-holders of the Society to the number of not more than seven-thirteenths of the number of directors to be elected at the next ensuing annual election of directors, for whose election as directors such policy-holder desires the Trustees to vote at such annual election, or requesting the Trustees to exercise their discretion on his behalf in the selection of policy-holders to act as such directors.

Third. The Trustees are authorized, in respect of said stock, to take, in their discretion, by vote thereon or otherwise, any action necessary or proper to effect the consummation of said plan for the mutualization of the Society, by securing to the policy-holders the right to elect directly twenty-eight (28) of the fifty-two (52) directors of the Society, or a like proportion of the entire number of directors of which the Board of Directors shall from time to time consist.

Fourth. In case said plan of mutualization shall become operative and the policy-holders shall become entitled to vote directly for twenty-eight (28) directors of the Society out of an aggregate number of fifty-two (52) directors, or a like proportion of any other number of which the board of directors may from time to time consist, then the Trustees, in respect of the stock held under this agreement, shall continue to vote for such lawfully eligible persons to be the remaining directors as they shall, in their uncontrolled discretion, select.

Fifth. In case of vacancies in the board of directors, due to resignation, death or other cause, the Trustees may make recommendations to the directors of the Society as to the persons to be elected to fill such vacancies

to the end that the purposes of this agreement may be promptly and effectually accomplished.

Sixth. No vote shall be cast upon said stock for any purpose except with the unanimous approval of the Trustees, but the Trustees may empower any one of their number actually to cast their vote.

Seventh. Any Trustee may at any time resign by delivering to the other Trustees his resignation in writing. In case of the death or resignation of any Trustee, the vacancy shall forthwith be filled by an appointment made in writing by the remaining Trustees. The term "Trustees" whenever used herein shall include the parties of the second part, and their successors so appointed.

Eighth. The party of the first part shall be entitled to the dividends on the stock deposited by him under this agreement.

Ninth. This agreement shall continue in force for the full period authorized by section 20 of the General Corporation Law of the State of New York, viz.: five (5) years from the date hereof. It shall be continued thereafter so long as the Trustees shall deem advisable, and the party of the first part hereby agrees that, upon the request of the Trustees, he will execute an instrument continuing, for a further period of five (5) years, this agreement and the powers of the Trustees hereunder, including said power to require an extension hereof. This agreement may, however, be terminated by the Trustees in their discretion whenever in their opinion its purposes have been accomplished, or for any reason its termination is, in their opinion, advisable.

Tenth. Every other stockholder of the Society may transfer his stock to the Trustees, to be held subject to the provisions of this agreement, and thereupon may participate in the terms, conditions and privileges thereof.

IN WITNESS WHEREOF, the parties hereto have set their hands unto five originals hereof the day and the year first above mentioned.

In presence of

[Signatures.]

721. Lease and License Agreement for Use of Patented Machinery.

THIS AGREEMENT, made and executed this day of , A. D. 19 , by and between the National Bread Company, a corporation duly organized under the laws of the State of New Jersey (hereinafter called the "Grantor"), party of the first part, and , a corporation duly organized under the laws of the State of , and having its place of business in the City of and State of (hereinafter called the "Grantee"), party of the second part, WITNESSETH:

First. That the said Grantor, for and in consideration of the sum of one dollar, to it in hand paid by the said Grantee, and twenty-five per cent. of the capital stock of said Grantee, receipt of which is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain and sell, unto the said Grantee and its successors, the exclusive right, license and privilege of using its Patented Mixing and Kneading Machines and Process for the Manufacture and Sale of Bread and Other Like Products, in the following-named territory, namely:

for the full term and life of any and all patents now owned, or which may

hereafter be acquired, by said Grantor on said machines, or any improvements thereon, subject, however, to all the conditions, stipulations and restrictions in the use of the said license, machines and process hereinafter contained; the Grantor reserving and excepting from said grant the right to sell its said patented machines to any hospital, asylum, institution or prison situated within the limits of said territory.

And said Grantor agrees to supply all such mixing and kneading machines, and other apparatus covered by its patents, as may be requisite and necessary for the business of said corporation, from time to time, as required, and within sixty days after a demand and requisition in writing therefor, at a cost to said corporation not exceeding ten per cent. over the actual cost to said Grantor of manufacturing and delivering; and to furnish the Grantee promptly, when requested, all necessary expert aid and instruction in the installation and operation of all machinery supplied by the Grantor, at a cost to said Grantee of actual disbursements by the Grantor, including traveling expenses, employees' salaries and incidentals while so engaged.

Second. That the right and license to use said machines and process is hereby declared to be definitely limited to the Grantee and its successors within the above-mentioned territory, and to be indivisible, unassignable and inalienable, and neither the whole nor any fractional part thereof, nor any of said patented machinery, shall be sublet, transferred, sold, mortgaged or otherwise disposed of to any person, firm or corporation, either within or without said territory, at any time during said license period, without the written consent and agreement of said Grantor; and the sale of the products manufactured by said machines and process shall likewise be restricted to said territory; but nothing herein contained shall be construed to prevent the creation and establishment by said Grantee, within said territory, of as many plants or bakeries as may be deemed necessary for the development of its business, nor to prevent the sale and disposition of its property and franchises, excepting said machines and process and said grant, license and privilege, to any other firm or corporation, in good faith and for value.

Third. It is also provided and agreed that said Grantee shall not increase its issue of stock, whether preferred or common, without delivering to the Grantor its proportion thereof, in the ratio of its holdings to the original issue, and shall not encumber its property or assets by an issue of bonds, mortgages, certificates of indebtedness, or other obligations, creating any lien or priority against its property, without proffering to said Grantor, in exchange for its holdings of stock in said corporation, such proportion of the securities creating such lien or priority as said Grantor's holdings of stock bear to the entire outstanding issue of stock; said Grantor to determine its acceptance or rejection of said proffer within ten days after receiving same; but nothing herein contained shall be construed to interfere with, or prevent, the issue of notes, bills of exchange, drafts, or other like papers, in the usual and customary course of business.

Fourth. The Grantee covenants and agrees, at all times hereafter, to admit the validity of the letters patent for said machines, which are now owned or which may hereafter be acquired by the Grantor, and not to violate or infringe the same, or any of them, or to contest the validity or the scope of

the claims thereof, or the title of the Grantor thereto, nor aid or encourage others in so doing, nor to manufacture, or cause to be manufactured, except with the Grantor's consent, any of the machinery covered by said patents.

Fifth. The Grantee further covenants to diligently prosecute, extend and develop the business of said corporation in said territory, and to keep its plant, or factory, in continuous operation, and not to permit the same to remain idle or inoperative for a longer period than three months in any one year, except by mutual consent, and to keep suitable and accurate records and books of account of the operations and financial condition of said corporation, and at all times afford said Grantor, or its authorized agents, free access thereto, and supply said Grantor, upon request, full and complete semi-annual statements of said operations and financial condition on forms to be supplied by the Grantor.

Sixth. It is expressly understood and agreed that if the Grantee herein shall violate any of the provisions of paragraphs two, three, four and five above, or shall cause, suffer or permit its plant or factory to remain idle or inoperative, excepting as above provided, or shall fail or refuse to give said Grantor, its agents or attorneys, access to its books and accounts, or to furnish said semi-annual statement at any time while said Grantor is the holder of bonds, stock or other securities issued by the Grantee, then the license and privilege hereby conveyed shall, after thirty days' notice and the failure of the Grantee within that time to correct and remedy any such violation of this agreement as may be complained of in said notice, immediately cease and determine and revert to said Grantor with the same force and effect as if this agreement had not been made.

Seventh. That the Grantor will, at its own cost and expense, defend and protect the Grantee in the exclusive use of said machines within the said territory against all infringers, licensees and others, and will at its own proper charge take such proceedings in law and in equity as may be necessary and proper to prevent and enjoin such infringement and to recover any damages which may be caused thereby, and to save the Grantee harmless from the result of any and all such acts on the part of any person or corporation whomsoever; and, in case of the failure of the Grantor to fulfill any of the obligations in this paragraph contained, the Grantee shall have the right and privilege of instituting any proceedings in law or in equity at its own cost and charges, and shall have the right to charge the same against the Grantor and to collect the same from it; provided, however, that the said Grantee shall first give thirty days' notice by letter duly registered and addressed to the Grantor at its office in the City of New York, making demand for compliance with the terms of this agreement on its part, before proceeding to exercise the rights hereby conferred on said Grantee. And the Grantor hereby warrants its title to the United States Patent of the said Mixing and Kneading Machine, numbered _____, issued on the _____ day of _____, 19____, to J. L., and the United States Patent for improvements in machines for Mixing and Kneading Dough or Analogous Materials, numbered _____ and issued on the _____ day of _____, 19____, to National Bread Company. And the Grantor further agrees to execute all licenses or other documents which may be necessary to vest in the Grantee the right to use the said

patents, subject to the terms and conditions of this agreement, within the territory of the Grantee, and any other patents or improvements which may be made, whether upon the present mixing and kneading machines or upon any other mixing and kneading machine that may be acquired by the Grantor, and all rights under any such patents in which the Grantor may have such an interest as to enable it to license the Grantee.

IN WITNESS WHEREOF, the parties of the first and second parts have caused this agreement to be signed by their officers thereunto duly authorized, and their corporate seals to be affixed, and have executed these presents in duplicate, the day and year first above written.

N. B. Co.,

By

[SEAL.]

Attest:

President.

Secretary.

722. Lease and License Agreement for Use of Patented Machinery.

THIS LEASE AND AGREEMENT, made at the City of Jersey City, in the State of New Jersey, this day of , 19 , between the National Bread Company, a corporation organized under the laws of the State of New Jersey, having an office in the City of New York (hereinafter called the "Lessor"), party of the first part, and of , in the State of , (hereinafter called the "Lessee"), party of the second part,

WITNESSETH: That the Lessor, in consideration of the conditions, covenants and agreements on the part of the Lessee herein contained, and of the sum of dollars (\$), by it duly received, does hereby lease to and license the Lessee under its patents to use the machine or machines known as "The National Bread Company's Kneader," now or hereafter delivered to the Lessee, and designated by number or numbers in the following schedules, viz.:

SCHEDULE OF MACHINES.

| | | |
|---------------------------------------|-------------|----------|
| National Bread Company's Kneader, No. | , capacity, | barrels, |
| National Bread Company's Kneader, No. | , capacity, | barrels, |
| National Bread Company's Kneader, No. | , capacity, | barrels, |

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the Lessor, or be added thereto with the consent of the Lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the Lessee under these presents, whether now or hereafter delivered to or in the possession of the Lessee, are hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

The following are mutually agreed to as the conditions of the lease and license of the leased machinery, all of which the Lessee hereby, and by the

acceptance and use of the leased machinery, covenants and agrees to keep and perform:

One. The leased machinery shall at all times remain and be the sole and exclusive property of the Lessor, and the Lessee shall have no right of property therein, but only the right to use the same upon the conditions herein contained. The leased machinery shall be used only by the Lessee self, or by the operatives in direct employ, and only in the factory or bakery now occupied by at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person, partnership or corporation, and neither the lease nor the license hereby granted can be assigned by the Lessee by own act or by operation of law. If the Lessee becomes insolvent or bankrupt, or has a receiving order made against , or makes or executes any bill of sale, deed of trust or assignment for the benefit of creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the Lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, or if the Lessee fails and refuses to pay the rentals and charges due hereunder, or observe and carry out the conditions, covenants and restrictions of this lease, then and in each such case this lease and license and any other lease or license then existing between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise, shall at the option of the Lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the Lessee under any other lease or license from the Lessor, whether as the result of assignment to the Lessor or otherwise, shall thereupon revert in the Lessor, free from all claims or demands whatsoever. The Lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it, or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, or retaking said leased machinery hereunder, and the Lessee shall afford all reasonable facilities therefor.

Two. The Lessee shall at all times and at own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the Lessor. The Lessee shall obtain from the Lessor exclusively and shall pay therefor, at the regular prices from time to time established by the Lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the Lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the Lessor, nor interfere with the proper operation of the same.

Three. The Lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed.

Four. The leased machinery shall be used only in the kneading of bread and

other dough or bakery material in the factory or bakery of the Lessee, situated at _____ in _____ in the State of _____.

Five. The Lessee shall pay to the Lessor on the last day of each calendar month as rent or royalty the rental or royalty of fifty cents (50c.) per barrel for each barrel or part of barrel used, manufactured and prepared during the next preceding calendar month in any way, whether wholly or in part by the aid of the leased machinery or any part thereof; provided, however, that in all cases when the Lessee shall pay to the Lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the Lessor will, in consideration of such prompt payment, grant a discount of twenty per cent. (20%) from such rent or royalty due for such preceding calendar month.

Six. The Lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, or the amount of work done by such leased machinery, and the Lessee shall not allow any person (other than the Lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen, the Lessee shall immediately by writing notify the Lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured because of any fault of the Lessee, or anyone in _____ employ, or because of the failure of the Lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any rights of the Lessor hereunder, the Lessee shall pay to the Lessor, as rent or royalty, fifty cents (50c.) per barrel for each barrel of flour or portion thereof, in the manufacture or manipulation of which the leased machinery or any part thereof shall have been used. The Lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and amount of barrels of flour or portions thereof in the manufacture or manipulation of which the leased machinery or any part thereof shall have been used, and shall allow the Lessor at all times, by its agents or attorneys, to examine and to take copies of such books, accounts and entries of the Lessee as may serve to determine the total number of barrels of flour or portions thereof used or manipulated by the aid of the leased machinery or any part thereof, and the Lessee shall produce all such accounts and entries upon request. The Lessee shall require each of _____ operators upon the leased machinery, or any part thereof, to keep upon blanks or blank books to be furnished by the Lessor, accurate daily records of the number of barrels of flour or portions thereof in the using or manipulating of which _____ has used the leased machinery or any part thereof, and shall require _____ operators or workmen to sign such records, and if requested so to do by the Lessor, shall verify the same under oath, and shall also furnish any further information called for by such blanks or blank books; and the Lessee shall send to the office of the Lessor in the City of New York, on or

before the fifth day of each calendar month the original records for the next preceding calendar month by operators, as above provided for; and, in case in any calendar month none of the leased machinery has been used, the Lessee shall notify the Lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month.

The following agreements, stipulations and provisions are agreed to:

Seven. If at any time the Lessee shall fail or cease to use exclusively the machinery held by under lease from the Lessor, as herein provided, the Lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license, or any other lease and license of machines, machinery, or devices like those mentioned in the foregoing "Schedule of machines," or designed for similar purposes, then existing between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise; and the possession of and full right to and control of all such machines, machinery or devices held by the Lessee under lease or license from the Lessor or its assignor shall thereupon revert in the Lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the Lessor because of breach thereof on the part of the Lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained, or contained in any other lease or license agreement subsisting between the Lessor and Lessee, whether as the result of assignment to the Lessor or otherwise, and expressed to be obligatory upon the Lessee, the Lessor shall have the right by notice in writing to the Lessee to determine forthwith this lease and license, and also if the Lessor so elects any other lease or license agreements then in force between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the Lessor. If, upon the expiration of the full term of this lease, the Lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the Lessee or the Lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the Lessor, as herein provided. Upon the expiration or termination of this lease and license, or any extension thereof by notice or by reason of any default on the part of the Lessee, as to the terms of this lease and license or any other lease or license from the Lessor, or otherwise as herein provided, the Lessee shall forthwith deliver the leased machinery to the Lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the Lessee for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the Lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the

same; and the Lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which shall have paid as consideration for the grant of this lease and license, rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president or treasurer of the Lessor, or by any assignee of the Lessor's rights hereunder, and posted by prepaid letter, addressed to the Lessee or delivered at usual or last-known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the Lessee from obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the Lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The Lessee admits the validity of each and every of the letters patent and trade marks or copyrights, of the United States of America owned by the Lessor or under which it is licensed, or any of the inventions of which are or hereafter may be embodied in the leased machinery, or used by the Lessor in its business. The Lessee also agrees that will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the Lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the Lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the Lessor.

Twelve. The term "Lessor" shall include the said National Bread Company and its successors and assigns. All the conditions and agreements binding on the Lessee shall be binding on and enforceable against legal representatives, successors and assigns.

In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

NATIONAL BREAD COMPANY,

By

[SEAL.]

Attest:

Secretary.

President.

If Lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

No. , dated , Kneading Machine.
 No. , dated , Machine for Mixing and Kneading Dough or
 Analogous Materials.

723. Lease and License Agreement for Sewing and Stitching Machines.

THIS AGREEMENT made at Boston in the State of Massachusetts this day of , 19 , between the U. S. M. Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the Lessor, of the one part, and of in the State of , hereinafter referred to as the Lessee of the other part:

WITNESSETH, the Lessor in consideration of the covenants and agreements on the part of the Lessee herein contained, does hereby lease to and license the Lessee under its patent to use the machine or machines of the "Good-year Department" of the Lessor designated by number or numbers in the following schedule, viz.:

SCHEDULE OF MACHINES.

and any duplicate parts, extras, mechanism and devices relating thereto or used in connection, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the Lessor, or be added thereto, by or with the consent of the Lessor (the whole of which machine or machines, duplicate parts, extras, mechanism and devices held by the Lessee under these presents, whether now or hereafter delivered, to or in the possession of the Lessee, is hereinafter referred to as the "leased machinery,") subject to the conditions hereinafter contained; and the Lessor hereby grants to the Lessee a license to use in connection with welted boots, shoes or other footwear made by the Lessee, the welts of which have been sewed to their uppers wholly by Goodyear Welt and Turn Shoe Machines or by Goodyear Universal Inseam Sewing Machines hereby leased or now held by the Lessee under lease from the Lessor heretofore executed, and the outsoles of which have been stitched to their welts wholly by Goodyear Outsole Rapid Lockstitch Machines hereby leased or now held by the Lessee under lease from the Lessor heretofore executed, the trade name or trade mark "Goodyear Welt" and to use, in connection with turned boots, shoes, or other footwear made by the Lessee the soles of which have been attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines hereby leased or now held by the Lessee under lease from the Lessor heretofore executed, the trade name or trade mark "Goodyear Turn."

And that the following are agreed to as conditions of this agreement, all of which the Lessee covenants and agrees to keep and perform:

One. The leased machinery shall at all times remain and be the sole and exclusive property of the Lessor and the Lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the Lessee himself or

by operatives in his direct employ, and only in the factory now occupied by him at _____ in the State of _____ unless the lessor shall by an instrument in writing, signed by its president, vice-president or treasurer, authorize the Lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered on sublet to any other person or corporation and neither this agreement nor the lease nor the license hereby granted can be assigned by the Lessee by his own act or by operation of law. If the Lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise, shall at the option of the Lessor cease and determine, and the possession of and full right to and control of machinery of the Lessor, the leases or licenses of which are so terminated, shall thereupon revert in the Lessor free from all claims and demands whatsoever. The Lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation or of altering, repairing, improving or adding to it, or determining the nature or extent of its use, and the Lessee shall afford all reasonable facilities therefor.

Two. The Lessee shall at all times and at his own expense keep the leased machinery in good and sufficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the Lessor. The Lessee shall obtain from the Lessor exclusively, and shall pay therefor at the regular prices from time to time established by the Lessor, all the duplicate parts, extras, mechanism and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the Lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from or in the leased machinery nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the Lessor as hereinafter provided, be held at the sole risk of the Lessee from injury, loss or destruction, and in case any welting or stitching or sewing machine or machines thereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and re-delivery, the Lessee shall pay to the Lessor in respect to each such machine so lost or destroyed the sum of two hundred and twenty-five (225) dollars as partial reimbursement to the Lessor for such loss or destruction and the Lessee shall forthwith return whatever remains of all the machinery so lost or destroyed to the Lessor at Beverly, Mass.

Four. The Lessee shall pay all taxes and assessments which shall be

assessed in respect to the leased machinery or other machinery of the Lessor held by the Lessee under lease or license upon whomsoever assessed. In case at any time any unapportioned tax or assessment shall be assessed to the Lessor in respect in part but not wholly to machinery of the Lessor in the possession of the Lessee the Lessee shall pay to the Lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the Lessor, of said machinery of the Lessor in the possession of the Lessee bears to the fair valuation to be determined by the Lessor of all machinery (excepting machinery, if any, in the Lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment include any tax or assessment in respect to tangible property in the Lessor's own possession the amount thereof, based at the established rate, upon the fair valuation, to be determined by the Lessor, of such property, shall first be deducted and the Lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the right of payments thereunder shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself.

Five. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the Lessee known in the trade as "Goodyear Welts" which have been or are to be welted wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the Lessee under lease from the Lessor, and the soles of which have been or are to be attached to their welts by Goodyear Outsole Rapid Lockstitch Machines held by the Lessee under lease from the Lessor or in the manufacture of boots, shoes or other footwear made by the Lessee known in the trade as "Goodyear Turn" the soles of which have been or are to be attached to their uppers wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the Lessee under lease from the Lessor. The Lessee shall not represent or sell as "Goodyear Welts" any boots, shoes or other footwear which are not welted wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the Lessor or the soles of which are not attached to their welts wholly by the use of Goodyear Outsole Rapid Lockstitch Machines held under lease from the Lessor, or as "Goodyear Turns" any boots, shoes or other footwear the soles of which are not attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the Lessor. The Lessee shall use the leased machinery to its full capacity in the manufacture of "Goodyear Welts" and "Goodyear Turns" limited only by the number of welted and turned boots, shoes and other footwear made by him, and in case at any time the Lessee has more work of the kind which can be performed by the Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines or Goodyear Outsole Rapid Lockstitch Machines of the Lessor than the machines for doing such work which the Lessee has under lease from the Lessor are suffi-

cient to perform, then the Lessee shall take from the Lessor under the printed form of lease and license agreement then in use by the Lessor for machines for doing such work, a sufficient additional number of machines to perform all of such work.

Six. The Lessee shall pay to the Lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes or other footwear or portions thereof, manufactured or prepared by or for the Lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole or in part attached to welts by the use of any welting or stitching or sewing machinery and in respect to each part of "turned" boots, shoes or other footwear or portions thereof, manufactured or prepared by or for the Lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of any sewing or stitching machinery, viz:—

SCHEDULE OF PAYMENT PER PAIR.

Such payments shall be made on the last day of each calendar month in respect to all such boots, shoes and other footwear manufactured or prepared by or for the Lessee during the next preceding month, provided, however, that in all cases when the Lessee shall pay to the Lessor on or before the fifteenth day of the calendar month the amount due pursuant to the schedule in this article hereof contained for the next preceding calendar month, the Lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount so due for such preceding calendar month. The Lessee, however, guarantees that the payments made in accordance with the foregoing Schedule of Payments under this agreement, in respect to boots, shoes or other footwear operated upon by the welting, stitching or sewing machines hereby leased (after deducting all abatements) shall amount in each calendar year to at least fifteen dollars (\$15.00) for each calendar month for each welting or stitching or sewing machine hereby leased, and at the end of each calendar year the Lessee shall pay to the Lessor the amount, if any, by which the total of such payments for said year is less than such guaranteed amount. All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the Lessor and the Lessee, provided, however, that (excepting in so far as is required by the guarantees herein contained in other lease and license agreements between the Lessor and the Lessee) in case under any other "Goodyear Department" lease and license agreement between the Lessor and the Lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines or Goodyear Outsole Rapid Lockstitch Machines, the Lessee shall have paid to the Lessor the amount set forth in the Schedule of Payments in such lease and license agreement contained in respect to any pair of boots, shoes or other footwear, then the Lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes or other footwear.

Seven. The Lessor may attach to the leased machinery or any thereof, an indicator or indicators to register the number of revolutions or movements

of any part or parts thereof, and the Lessee shall not allow any person (other than the Lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register or shall be disturbed or out of repair or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the Lessee shall immediately by writing notify the Lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured, because of any fault of the Lessee or any one in his employ, or because of the failure of the Lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay the Lessor, without the right to any discount, eight cents per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The Lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes and other footwear or portions thereof manufactured or prepared by or for the Lessee which have been welted in whole or in part or the soles of which have been in whole or in part attached to welts by the use of welting or stitching or sewing machinery, and of turned boots, shoes or other footwear or portions thereof manufactured or prepared by or for the Lessee, the soles of which have been sewed or attached to their uppers in whole or in part by the use of sewing, or stitching machinery and shall allow the Lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the Lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof; and the Lessee shall produce all such accounts and entries upon request. The Lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the Lessor accurate daily records of the number and kind of boots, shoes and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof has been used, and shall require his operators to sign such records, and, if requested so to do by the Lessor, shall certify the same under oath. The Lessee shall send to the office of the Lessor in Boston, on or before the fifth day of each calendar month, original records for the next preceding calendar month kept by his operators as above provided for, and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the Lessee on or before the fifth day of the next succeeding calendar month shall send to the office of the Lessor in Boston the blank for said month for each such idle machine marked "Not in use" and signed by the Lessee. The Lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:

Eighth. If, at any time, the Lessee shall fail or cease to use exclusively welt sewing and outsole stitching machinery held by him under lease from

the Lessor in the manufacture of all welted boots, shoes or other footwear made by or for him, and welts or soles of which are sewed, stitched or attached by the aid of machinery, or shall fail or cease to use exclusively turn sewing machinery held by him under lease from the Lessor in the manufacture of all turned boots, shoes or other footwear made by or for him, the soles of which are sewed or attached by the aid of machinery, the Lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use machinery then existing between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise and the possession of and full right to and control of all machinery the lease or license of which is so terminated, shall thereupon revert in the Lessor free from all claims and demands whatsoever.

Nine. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the Lessor, as in this agreement provided, for the full term of this agreement, but if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise and expressed to be obligatory upon the Lessee, the Lessor shall have the right by notice in writing to the Lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the Lessor and the Lessee, whether as the result of assignment to the Lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the Lessee or the Lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the Lessor, as hereinafter provided. Upon the expiration of this agreement or any extension thereof or the termination of the lease and license herein contained, the Lessee shall forthwith deliver the leased machinery to the Lessor at Beverly, Mass., in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the Lessor without prejudice to any other rights or remedies of the Lessor such sums as may be necessary to put the leased machinery in suitable order and condition to lease to another Lessee. The Lessee, for himself, his heirs, executors, and administrators, successors and assigns, hereby grants to the Lessor, its successors and assigns, full right, power and authority upon such expiration or termination and without prejudice to any other rights or remedies of the Lessor to enter upon the premises and into any factory room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and in no case shall the Lessee have any claim for the

repayment or offset of any sum or sums, or any part thereof, which shall have been paid under this agreement or in respect to the lease or license herein contained or in anywise in respect to the leased machinery.

Ten. Upon the expiration of this agreement or any extension thereof, or the termination of the lease and license hereby granted, the Lessee in addition to all other payments in this agreement provided for, and without prejudice to any other rights or remedies of the Lessor, shall pay to the Lessor in respect to each welting or stitching or sewing machine hereby leased the sum of one hundred and fifty (150) dollars as partial reimbursement to the Lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

Eleven A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the Lessor or by any assignee of the Lessor's rights hereunder and posted by prepaid letter, addressed to the Lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of the lease and license hereby granted shall be without prejudice to any rights or remedies which the Lessor may have for violation of contract, use of machines without right, use of patented inventions without license, or otherwise.

Twelve The Lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the letters patent of the United States of America, owned by the Lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and the validity of and title of the Lessor to the exclusive ownership of the trade names or trade marks "Goodyear Welt" and "Goodyear Turn" used in connection with boots, shoes and other footwear. The Lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof, or of any extension or renewal thereof, of any of the letters patent referred to in the "Schedule of Patents" hereto annexed or the title of the Lessor thereto and that he will not directly or indirectly infringe or contest the validity of or the title of the Lessor to the said trade names or trade marks "Goodyear Welt" or "Goodyear Turn." The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the Lessee from the admissions and estoppels herein set forth.

Thirteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the Lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the Lessor.

Fourteen. The term "Lessor" shall include the U. S. M. Company and its successors and assigns. All the conditions, stipulations and provisions binding on the Lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to

the number and gender of the parties shall be read according to their real number and gender.

IN WITNESS WHEREOF, the parties have duly executed this instrument in duplicate, the day and year first above written.

[Signatures.]

SCHEDULE OF PATENTS.

724. Contract for Furnishing a Supply of Coal.

THIS ARTICLE OF AGREEMENT, made the _____ day of _____, A. D. 19____, between _____, of the city of _____, county of _____, and state of _____, party of the first part, and _____, of county of _____, and state of _____, of the second part,

WITNESSETH, that the parties to this agreement, in consideration of payments to be made, as hereinafter stated, stipulate and agree as follows: The said party of the first part agrees, subject to the reservations hereinafter named, to sell to the party of the second part _____ coal, in such quantities as the said party of the second part may require for use, at _____, situated at _____, from date hereof until the _____ day of _____, A. D. 19____, at the rate of _____ per ton _____, said coal to be _____ by the party of the _____ part at _____, provided _____.

THE SAID PARTY OF THE SECOND PART agrees to buy of the party of the first part all the _____ coal _____ may need for use in _____ from the date hereof until the _____ day of _____, A. D. 19____, and to pay the said party of the first part the rates above mentioned for all coal _____ under this contract, said payments to be due and payable on the _____ day of each month, for all coal _____ during the next preceding calendar month. It is further mutually agreed, that the said party of the first part shall not be held responsible for a failure to _____ coal to the said party of the second part during unusual delays of transportation, resulting from strikes, severe storms, or other causes beyond the control of the party of the first part; or in case of a stoppage of _____ mines, caused by a strike among _____ miners or other employees, the said party of the first part is to be released from all obligation to furnish coal to the said party of the second part during such suspension. It is further agreed that the said party of the first part will, if required, use _____ best endeavors to purchase some other corresponding grade of coal, and furnish the same to the said party of the second part, at the lowest market price at which it can be obtained by the said party of the first part; or the said party of the second part, at _____ option, may secure _____ supply of coal elsewhere during such suspension _____.

WITNESS, our hands and seals, the day and year first above written.

[Signatures seals.]

725. Contract for Sale of Cattle.
Colorado.

Colo., _____, 19____.

THIS IS TO CERTIFY, that _____ have this day sold the following described property to _____, viz.: _____ Brands: _____ Consideration _____ dollars (\$ _____). Received in full.

_____ also agree to defend title to property herein described.

[Signatures.]

726. Option Contract for Purchase of Land.

Illinois.

I, _____, of _____, for and in consideration of the sum of _____ dollars to _____ in hand paid by _____ of _____, do hereby give to the said _____ heirs and assigns, the privilege of purchasing on or before the _____ day of _____, A. D. 19____, the following described real estate situated in the county of _____, and state of Illinois, to wit: [description] at and for the price of _____ dollars, to be paid as follows, viz.: _____ dollars in cash and the sum of _____ dollars, _____ to be secured by a mortgage or trust deed on said real estate, in form to be satisfactory to _____; said cash payment to be made and securities delivered on or before the _____ day of _____, A. D. 19____, to _____.

I ALSO AGREE to furnish an abstract of title, showing good title to said real estate. In case the privilege of purchase hereby given is exercised, the price above named paid and secured, and the securities accepted, as above provided, I agree to convey and assure the said real estate to said _____, heirs or assigns, by a good and sufficient _____ deed, reciting a consideration of \$ _____ free and clear of all liens or encumbrances whatsoever, except as to taxes, assessment, or impositions levied, assessed or imposed upon said real estate subsequent to _____.

THIS INSTRUMENT shall not be recorded, but is deposited by the said _____ by mutual agreement, with _____, and in case the privilege of purchase hereby given is not exercised and the conditions hereof fully performed by said _____, heirs or assigns, and written notice of such exercise and performance given by _____ to said _____ on or before the _____ day of _____, A. D. 19____, said privilege shall thereupon wholly cease [but no liability to refund the money paid therefor, shall arise]; said abstracts of title be returned in good order, and said _____ shall at once surrender this instrument to _____ for cancellation. During the existence of said privilege of purchase, this instrument shall be binding on _____ heirs, executors, administrators and assigns, who may exercise the rights herein reserved by _____, and receive the surrender above mentioned.

WITNESS MY HAND AND SEAL, this _____ day of _____, A. D. 19____.

[Signatures and seals.]

727. Farm Contract; Farming Upon Shares.

Illinois.

THIS AGREEMENT, made this _____ day of _____, A. D. 19____, by and between _____, party of the first part, and _____, owner of the real estate hereinafter described, party of the second part:

WITNESSETH, that said party of the first part hereby covenants and agrees to and with said party of the second part, for the consideration hereinafter named, to well and faithfully till and farm, during the term of this contract, being from _____, 19____, to _____, 19____, in a good, husbandman-like manner, and according to the usual course of husbandry, the following described premises and real estate, situated in the county of _____, and state of _____, viz.: [description]

AND SAID PARTY OF THE FIRST PART hereby further covenants and agrees

to sow and plant the said land in such crops consistent with good husbandry, as said party of the second part shall direct,

SAID PARTY OF THE FIRST PART also agrees to furnish, at own cost and expense, all proper and convenient tools, teams, utensils, farm implements and machinery [*except as hereinafter otherwise provided*] to carry on and cultivate said farm during said term, and to furnish and provide all proper assistance and hire help in and about the cultivation and management of said farm, and to farm and cultivate the said lands in the best manner, and maintain and keep up the fences so as to protect said crop from injury and waste, and to watch, care for, and protect the same, and protect the fruit and shade trees thereon, and to cut no trees, and to commit no waste or damage on said real estate, and to suffer none to be done, and to crop and cultivate said lands, and harvest, thresh and secure the crops grown thereon in farmer-like style and in the best possible manner during said term; and after taking off the crops, to plow immediately, in a good and proper manner, so much and such parts of said farm suitable for a succeeding crop as shall be plowed at the time said party of the first part takes possession thereof; and to keep up and maintain in good repair all structures, stables, cribs, fences and improvements on said farm, and generally do and perform all proper and ordinary work, labor, care and skill requisite, usual or necessary, to work and crop said premises in a proper manner and style, and to the best interests of the party of the second part; and further agrees not to remove any straw or manure from said farm, and not to sell or remove, or suffer to be sold or removed any of the produce of said farm or premises, of any kind, character or description, until the division thereof, without the written consent of said party of the second part; and until such division, the title and possession of all hay, grain, crops and produce, raised, grown or produced on said premises, shall be and remain in said party of the second part. Upon the termination of this contract, in any way, said party of the first part will yield up said premises to said party of the second part or his order in good condition and repair.

SAID PARTY OF THE FIRST PART hereby agrees to pay and deliver to said party of the second part on the day of , 19 , the part of the crops so raised on said lands, or dollars for the use of the above described land for the above named term.

IN CONSIDERATION of the faithful and diligent performance of the foregoing stipulations by said party of the first part, said party of the second part agrees, upon reasonable request thereafter made, to give and deliver on said farm, the part of all grains, vegetables and other crops so raised and secured upon said farm during said term, for the sole use and benefit of said party of the first part, and said party of the first part agrees to deliver at , free of all expense to said party of the second part, of said crops; and said party of the first part further agrees to stack on said premises, free of all charge to said party of the second part, all hay cut during said term .

THIS CONTRACT is made with the understanding that said premises are at all times subject to sale, and in case of sale said party of the first part shall re-deliver possession of the same on thirty days' written notice, pro-

vided shall be paid \$ per acre for any plowing may have done on said land for the crop of the season of 19 , and not seeded at time of sale, and be allowed to properly cultivate, harvest and remove any crops that may have been seeded before the time of sale, provided the same are removed prior to .

IN WITNESS WHEREOF, said parties have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

WITNESSES:

[Signatures.]

728. Option on Coal and Mineral Land.

Iowa.

THIS AGREEMENT, made this day of , A. D. 19 , by and between of the county of , state of , party of the first part, and of the county of , state of Iowa, party of the second part, or assigns,

WITNESSETH, that whereas the said party of the first part is the owner of the following described real estate, situated in the county of , state of Iowa, to wit: [description]

AND SAID PARTY OF THE SECOND PART is desirous of prospecting thereon for coal, or other mineral; that said party of the first part for and in consideration of one dollar, in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted and do by these presents grant to the said party of the second part the right to enter in and upon said lands, and any part thereof, and to prospect for coal and other minerals, and sink such prospect shafts and slopes, or drill such holes as may be necessary to ascertain the quantity and quality of any coal or other mineral in and upon and underlying said land, such privilege so hereby granted to continue in full force and virtue to and until the day of , 19 , from the date of these presents; and for the consideration aforesaid the said party of the first part agrees to and with the said party of the second part, that said party of the second part shall have the right and option at any time on or before the said day of , 19 , to purchase said land, coal or other mineral at and for the price of dollars per acre, for land, coal and mineral.

IT IS UNDERSTOOD AND AGREED that the said party of the second part, however, shall not be held liable or bound to take such land, coal or mineral except at option; and in event of abandoning or not making the purchase thereof as herein provided shall not be held liable for any damages or compensation therefor, or growing out thereof, or for the sinking of shafts, slopes or prospect holes, as aforesaid.

PROVIDED, however, that notice of the determination of the said party of the second part to make such purchase shall be given in writing to said party of the first part on or before the expiration of said period, as aforesaid. This contract shall be null and void and absolutely terminate, unless purchase is made and notice is given in writing by the day of , 19 , as above set forth.

THE SAID PARTY OF THE SECOND PART shall not be bound to make any tender of the purchase price, but the same shall be paid to the party of the first part upon delivery to the said party of the second part of a good and sufficient deed of said land or coal or other mineral as aforesaid; provided, in case there should be any encumbrances or liens upon said lands, that shall not be removed by said party of the first part, the said party of the second part may pay and discharge the same out of the purchase money aforesaid, the balance, after satisfying said encumbrances and liens, to be paid to the party of the first part, upon delivery of deed as aforesaid. An abstract of title showing perfect title, shall be furnished by first party.

THIS AGREEMENT shall run with the land, and be binding upon the several heirs, executors, administrators and assigns of the parties hereto. In case of failure to purchase, second party may remove all tools, machinery or appliances used in prospecting on said land.

IN CASE said second party shall purchase said land, said first party shall have the right to remove all crops therefrom, and the right of second party to enter upon said lands for the purpose of mining said coal is admitted .

IN WITNESS WHEREOF, the said parties of the first and second part have hereunto set their hands and seals, the day and year first above written.

[Signatures and seals.]

WITNESSES:

[Signatures.]

729. Contract for Mining Coal, With Option to Purchase.

Iowa.

ARTICLE OF AGREEMENT, made and entered into this day of A. D. 19 , by and between , part of the first part, and , part of the second part, WITNESSETH: That the said part of the first part agrees to sell and convey all the mineral, stone, coal, , that is or may underlie the surface of the following described tract or lot of land situated in county, Iowa, to wit: [description]

And also grants the exclusive right to test, open, mine and remove said coal; and further grants the right to construct railroads, underground entries, and all necessary buildings, and fixtures to facilitate the mining and removing of said coal. And further agrees to sell and convey in fee simple, free of encumbrance, the above described land to said second party, or his assigns, if he or they so elect, within from this date and for the price of \$ per acre.

And in consideration of the several covenants of the party of the first part, it is agreed by the part of the second part that if can secure like lease to this upon land in the vicinity of the land above described, lying connected together in a body to the extent of acres, including that embraced in this lease which said second party hereby agrees to endeavor to do will within from the date of this contract commence work on said

premises to test the existence of coal therein, and prosecute the same with all reasonable diligence to the extent necessary to determine satisfactorily whether coal in sufficient quantities, of good quality, extends over sufficient territory to justify the necessary expense of mining the same in large quantities, such test to be made by drifting, sinking shaft, drilling or otherwise on some portion of said land; and in case there should be discovered a mineable vein or basin of stone coal of sufficient quantity or quality to justify the opening and mining of said coal in the opinion of the said second part then agree to mine out said coal and pay the following rate per bushel for all coal mined on said premises, to wit: pay for each bushel of merchantable coal, the payments to be made and continue in the following manner, to wit: pay in hand one dollar upon the signing and sealing of this contract, the receipt whereof is hereby acknowledged; payments for coal mined in each calendar month to be made on or before the day of the succeeding month.

IT IS ALSO AGREED, that all coal mined on said premises is to be accurately weighed, and the weight to be kept in a book, which shall at all reasonable times be open for inspection of the said first part; and it is further agreed that the said part of the second part to have the privilege of using the said railroads, underground entries, buildings and fixtures for the purpose of mining and removing coal from other lands, and after the said mine becomes exhausted or unmineable, they may continue the use of said railroad, underground entries, buildings and fixtures by paying the part of the first part the sum of \$ per annum so long as they may use them for the purpose of transporting coal. All moneys due under this contract to be paid or received in bankable funds of the state of Iowa.

And we, the parties, by the signing and sealing of this contract, bind ourselves, our heirs or assignees, and legal representatives, to strictly adhere to the several covenants and agreements of this contract, as witness our hands the day and year above written.

[Signatures.]

IN WITNESS, ETC.

[Signatures.]

730. Contract for Sale of Timber. Michigan.

RECEIVED, , A. D. 19 , from , dollars, in consideration of which hereby sell and convey to said , so much of the timber now standing, growing or being on the following described land, in county, state of , to wit: [*description*] as shall remove therefrom prior to , A. D. 19 , hereby giving said permission to enter upon said land and cut and remove said timber up to , A. D. 19 , but not thereafter, and all timber, or material made therefrom, remaining on said land after that date shall be and remain property.

It is a condition of this sale that the said shall pay all taxes on the above described lands .

It is distinctly understood that no timber other than on the above described lands shall be cut, removed or destroyed.

[Signatures.]

**731. Farm Contract, Upon Shares.
Minnesota.**

THIS AGREEMENT, made this day of , 19 , by and between , party of the first part, and , owner of the real estate hereinafter described, party of the second part;

WITNESSETH, that the party of the first part hereby agrees to and with the party of the second part, for the consideration hereinafter named, to well and faithfully till and farm, during the season of farming, in the year 19 , commencing , 19 , and ending , 19 , in a good and husband-like manner, and according to the usual course of husbandry, the following described premises and real estate, situate in the county of , and state of Minnesota, viz: [*description*] and the said party of the first part hereby further agrees to sow and plant the said land in such crops as the party of the second part shall direct, but said party is to furnish all seed necessary to sow and plant said land, and party is to pay one of the threshing-machine bill for threshing the grain .

The party of the first part also agrees to furnish, at his own cost and expense, all proper and convenient tools, teams, utensils, farm implements and machinery (except as hereinafter otherwise provided) to carry on and cultivate said farm during said season, and to furnish and provide all proper assistance and hired help in and about the cultivation and management of said farm, and to farm and cultivate the said lands to the best advantage and according to his best skill and judgment, and to maintain and keep up the fences so as to protect said crops from injury and waste, but second party is to furnish material; first party to watch, care for and protect the fruit and shade trees thereon, and to cut no green trees and to commit no waste or damage on said real estate and to suffer none to be done, and to crop and cultivate said lands, and harvest, thresh and secure the crops grown thereon in a farmer-like style and in the best possible manner during said season, and after harvesting the crops to plow immediately in a good and proper manner so much and such parts of said farm suitable for a succeeding crop as shall be plowed at the time the party of the first part takes possession thereof; and to keep up and maintain in good repair all buildings, stables, cribs, fences and improvements on said farm, but said second party is to furnish material; first party to do and perform all proper and ordinary work, labor, care and skill requisite, usual or necessary to work and crop said premises in a proper manner and style and to the best interests of the party of the second part; and further agrees not to remove any straw or manure from said farm, but to haul out and spread on said premises all manure made thereon, and not to sell or remove or suffer to be sold or removed any of the produce of said farm or premises, or the stock, increase, income or the products herein mentioned of any kind, character or description, until the

final settlement, without the written consent of the party of the second part; and until such settlement, the title and possession of all hay, grain, crops, produce, stock, increase, income and products, raised, grown or produced on said premises shall be and remain in the party of the second part, and said party of the second part has the right to take and hold enough of the crop, stock, increase, income and products that would on the division of the same belong to said party of the first part, to repay any and all the advances made to him by party of the second part, and interest thereon at per cent. per annum, and also to pay all indebtedness due said party of the second part by said party of the first part, if any there be. The party of the first part is, also, to work out the road tax on all the said land, and to destroy all Russian thistles and other noxious weeds declared by statute to be common nuisances, within the times prescribed by law. It is also agreed that in case said party of the first part neglects or fails to perform any of the conditions and terms of this contract on his part to be done and performed, then said party of the second part is hereby authorized and empowered to enter upon said premises and take full and absolute possession of the same, and he may do and perform all things agreed to be done by the party of the first part remaining undone, and to retain or sell sufficient of the crops raised on said premises that would otherwise belong to said first party if he had performed the conditions hereof, to pay and satisfy all costs and expenses of every kind incurred in performing said contract, with interest at per cent. per annum, and the residue remaining, if any, of said crops, shall belong to said party of the first part, after all conditions are fulfilled. This contract shall not be assignable or sublet by party of first part without written consent of party of the second part.

In consideration of the faithful and diligent performance of all the stipulations of this contract by the party of the first part, the party of the second part agrees, upon reasonable request thereafter made, to give and deliver on said farm, the of all grains, vegetables, , so raised and secured upon said farm during said season .

IN TESTIMONY WHEREOF, both parties have hereunto set their hands and seals the day and year hereinbefore written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

732. Contract to Labor on Farm.

South Carolina.

STATE OF SOUTH CAROLINA,

County of .

THIS AGREEMENT, made by and between , employer and landlord, and , employee and laborer, this day of , 19 , WITNESSETH:

1. That the said , landlord, has this day employed the said ,

laborer, to do general farm work for the said landlord for a period of _____ months, beginning the _____ day of _____, 19____, and ending the _____ day of _____, 19____, and will pay for said services the sum of \$ _____ per month, payable _____, all lost time to be deducted for *pro rata*.

2. That the said laborer will work for the said landlord for the period above mentioned and at wages therein stated; obeying all lawful commands of the said landlord or his agents in the premises, and working under his or their supervision, direction and control. Said laborer further agrees that the work herein contracted for shall embrace all such service and labor as is known as regular farm work and caring for stock and cattle, household work, cutting wood, terracing, ditching and cultivating, gathering and marketing crops.

In addition to the above payment for services the said laborer shall have a house to live in and fire wood for the term of this contract.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first written.

[Signatures and seals.]

In presence of

[Signatures.]

THE STATE OF SOUTH CAROLINA, }
 County of _____ . }

I, _____, magistrate, do hereby certify that at the request of _____, one of the parties to the foregoing contract, the same was duly executed before me and read and explained to the parties by me.

GIVEN under my hand and seal this _____ day of _____, A. D. 19____.
 _____, Magistrate. [SEAL.]

733. Contract for Farm Labor on Shares of Crop.
South Carolina.

STATE OF SOUTH CAROLINA, }
 County of _____ . }

MEMORANDUM OF AGREEMENT made and entered into this _____ day of _____, A. D. 19____, between _____, employer and landlord, and _____, employee and laborer, WITNESSETH:

That the said _____, landlord, has employed the said _____, laborer, to cultivate that portion of the farm lands of said _____, situate in _____ township, in said county, containing about _____ acres, which shall be cultivated in the following crops in as nearly the proportions indicated as may be practicable: [*state them*]

The said landlord shall furnish the said laborer with said land, a house to live in, all necessary seed for planting said crops, and such fertilizers as

said landlord may deem advisable, also, tools and stock with which to cultivate the crops, and a reasonable amount of supplies not to exceed the sum of dollars, to be furnished from time to time during the year as said landlord may think advisable. [*State them*].

The said landlord agrees to pay said laborer for making said crops of all crops of , payable on or before the 31st day of December, 19 , produced by him or them on said lands, after first deducting from the whole crop the value of seed and fertilizers used in making same.

And the said laborer further agrees to cultivate said crops in a farm-like manner, making all necessary repairs to fences and terraces; and making new ones when necessary, to clean out ditches when necessary, to cultivate and gather said crops, and do all said work under the supervision, direction and control of said landlord, or his agent, and in case of failure to do so the said landlord, after two days of such failure by said laborer, shall have the right to have such labor performed at the expense of said laborer.

When not engaged in working said crops the said laborer agrees to work for the said landlord upon his own crops at customary prices, if the landlord so desires; and further agrees to take care of the stock intrusted to his or their care and allow the landlord the use and control of them except as may be necessary to the making and gathering of the crops herein stipulated for; and will work all plantation roads on the premises when called upon by the landlord.

It is expressly stipulated that the said laborer shall not have the right to cut any green wood nor pasture upon any of the said lands without the landlord's written consent.

It is further stipulated that the landlord shall have all the remedies now provided by law for the collection of rent or other debts which may be due under this contract. The service herein contracted for shall begin on the day of , 19 , and extend for , to wit: until the day of , 19 .

WITNESS the hands and seals of the said parties, the day and year first above written.

[*Signatures and seals.*]

In presence of

[*Signatures.*]

THE STATE OF SOUTH CAROLINA, }
County of . }

I, , magistrate, do hereby certify that at the request of one of the parties to the foregoing contracts, the same was duly executed before me and read and explained to the parties by me.

GIVEN under my hand and seal this day of , A. D. 19 .

, *Magistrate.*

734. Planter's Contract — (Special)
South Carolina.

MEMORANDUM OF AGREEMENT between _____, planter, of the county of _____, state of _____, and _____, laborer, engaged, or to be engaged, in plantation work upon the lands of said planter, known as _____ plantation; made this _____ day of _____, Anno Domini nineteen hundred and _____, and to continue in force until the _____ day of _____, 19 _____.

The party of the first part (planter) agrees to furnish _____, and the party of the second part (laborer) agrees to use all diligence, and give his time and attention, to the best of his ability, to the cultivation of the soil, to the tending and gathering in of the crop, and _____.

And in consideration of the services of said laborer, the said planter agrees to give him for his sole use and benefit all crops raised upon such portion of the land as he may cultivate in excess of _____, which last the said planter reserves for his own use and benefit.

And it is mutually agreed that none of said crop shall be removed from said plantation without the written permission of said planter; and the said laborer, for any violation herein, shall forfeit all share and interest in said crop.

And it is further agreed that the laborer shall deliver to the said planter the planter's portion of said crop _____ on or before the _____ day of _____, 19 _____. And to the performance of this agreement each party binds himself, his heirs, executors and administrators.

[Signatures and seals.]

WITNESS:

[Signatures.]

CHAPTER XXI.

COVENANTS.

THE word *covenant*, in its most general signification, means any kind of promise or contract, whether it be made in writing or by parol. In a more technical sense, a covenant is an agreement between two or more persons, entered into in writing and under seal, whereby either party stipulates for the truth of certain facts, or promises to give or do something to or for the other, or to abstain from the performance of something. No particular form of words is necessary to make a covenant; but any words which manifest the intention of the parties, in respect to the subject-matter of the contract, are sufficient.

An express covenant, or a covenant in fact, is one expressly agreed between the parties and inserted in the deed. To create an express covenant, the formal word "covenant" is not indispensably requisite. The words, "I oblige," or, "bind myself," or, "I agree," are held to be covenants; and so are the usual words of a bond. An implied covenant is one which the law intends and implies, though it be not expressed in words. In some of the states, covenants for title, are implied in deeds; in others, no implied covenants are allowed.

See the chapter on DEEDS. There are some words which, of themselves, do not import an express covenant, yet, being made use of in certain contracts, have a similar operation, and are called covenants in law. They are as effectually binding on the parties as if expressed in the most unequivocal terms. If a lessor demise and grant to his lessee a house or lands for a certain term, the law will imply as covenant on the part of the lessor, that the lessee shall, during the term, quietly enjoy the same against all incumbrances. And the words "yielding and paying" in a lease, imply a covenant on the part of the lessee that he will pay the rent.

The distinction between personal covenants (as of title, incumbrances, etc.), and real covenants (as of quiet enjoyment, further assurance, etc.), is to be carefully observed. Personal covenants may only be enforced by the immediate grantee, real covenants by subsequent grantees also.

It is usual in covenants to name the representatives of the parties upon whom, or in whose favor, they operate. Thus, in a covenant to pay money, the covenantor usually declares that he binds himself, his heirs, executors, and administrators. So in a covenant regarding lands, the covenantor binds himself, his heirs and assigns. But these words are not now usually essential in conveyances in most of the states; for the statutes usually regulate the liability of heirs and personal representatives for the debts of their ancestors; and in such case, the frame of the covenant cannot enlarge their liability, nor will the omission to mention them exonerate them.

The law in regard to covenants relating to lands is now to be found largely in the statute law of the several states. This law has been fully digested in the chapter on DEEDS, which should be consulted in regard to the law in each state. Short forms of covenants are now very generally provided for under the statute laws.

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735. A Covenant by One Person to One Person.

And the said A. B., for himself, his heirs, executors, and administrators, doth covenant with the said Y. Z., his heirs, executors, and administrators [or, his heirs and assigns, or, his executors, administrators, and assigns, *as the case requires*], that [*etc., setting forth the things stipulated*].

736. A Joint Covenant by Two or More Persons to One Person.

And the said A. B., C. D., and E. F., for themselves, their heirs, executors, and administrators, and for every of them, do covenant with [*etc., as above*].

737. A Joint and Several Covenant.

And the said A. B., C. D., and E. F., for themselves, their heirs, executors, and administrators, do jointly and severally covenant with [*etc., as above, Form 735*].

738. A Several Covenant.

And the said A. B. and C. D., for themselves, their heirs, executors, and administrators, do severally, and not the one for the other, or for the act or deed of the other, but each for himself and for his own acts only, covenant, promise, grant, and agree to and with [*etc., as in Form 735*].

739. The Same; Another Form.

And the said A. B., for himself and his heirs, executors, and administrators, the said C. D., for himself, his, etc., and the said E. F., for himself, his, etc., do, and each of them doth, severally and respectively, and not jointly, covenant with [*etc., as in Form 735*].

740. Covenant by a Husband for Himself and Wife.

And the said A. B., for himself, his heirs, executors, and administrators, and for and on behalf of the said C., his wife, and her heirs, doth covenant with [*etc., as in Form 735*].

741. Covenants by Several Grantors, Each for his Own Portion of the Estate Only.

And the said A. B., for himself, his heirs, executors, and administrators, and for the estate, right, title, quiet enjoyment, and further assurance of the one-third part of the above granted premises; and the said C. D., for himself, his heirs, executors, and administrators, and for the estate, right, title, quiet enjoyment, and further assurance of one other third part of the said premises; and the said D. E., for himself, his heirs, executors, and administrators, and for the estate, right, title, quiet enjoyment, and further assurance of the remaining third part of the said premises, do, and each and every of them doth, severally, but not jointly, covenant with [*etc., as in Form 735*].

742. Mutual Covenants;—Independent.¹

And the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant with the said Y. Z., his executors, administrators, and assigns, that he will pay unto the said Y. Z., his executors, administrators, or assigns, the sum of dollars, on the day of , 19 . And the said Y. Z., for himself, his executors, administrators, and assigns, doth covenant with the said A. B., his executors, administrators, and assigns, that he will assign and transfer said lease to the said A. B., his executors, administrators, or assigns, on or before the day of .

743. Mutual Covenants;—A Covenant to Convey Being Dependent Upon Covenant to Pay Purchase Money.

And the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant with the said Y. Z., his heirs and assigns, that he will pay to the said Y. Z., his heirs or assigns, the sum of dollars, on the day of next; and in consideration thereof, the said Y. Z., for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said A. B., his heirs and assigns, that he will make and execute to the said A. B., his heirs or assigns, a good and sufficient deed of [*etc., as the case may be*] upon the payment of said sum as aforesaid.

744. Covenant of Seizin.²

And the said A. B., for himself, his heirs, executors, and administrators, does covenant, grant, and agree, to and with the said party of the second part, his heirs and assigns, that the said party of the first part* [*or, the said A. B.*], at the time of the sealing and delivery of these presents, is lawfully seized in his own right [*or otherwise, as the case may be*] of a good, absolute, and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above-granted premises, with the appurtenances [*if conveyed subject to an incumbrance, say, subject as aforesaid*].

745. The Same; A Short Form.

[*As in the preceding form to the * , continuing thus:*] at the execution hereof is seized of an indefeasible estate in fee simple in the said real estate.

746. The Same; Several and Not Joint.

And the said A. B., C. D., and E. F. do hereby, severally and not jointly, but each for himself, and for his heirs, executors, and administrators, covenant, grant, and agree, to and with the said party of the second part, that he is, at the time of the sealing and delivery of these presents, lawfully seized in his own right [*or otherwise, as the case may be*] of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted premises, with the appurtenances [*if conveyed subject to an incumbrance, say, subject as aforesaid*].

¹ An independent covenant is where the failure to perform on the part of one party is not a defense for a breach on the part of the other party. Each party has an independent recovery for an injury resulting from a breach of the covenant.

² In many states the old forms of these cove-

nants are largely done away with by statutes, and either short forms are adopted or meanings are given by statute to certain words or expressions when used in conveyances. For these, see chapter on DEEDS under the several states.

747. The Same; By Life Tenant and Tenant in Fee of the Reversion.

And the said A. B. and C. D. do hereby, severally and not jointly, but each for himself, and for his heirs, executors, and administrators, covenant, grant, and agree, to and with the said party of the second part, his heirs and assigns, that he is, at the time of the sealing and delivery of these presents, lawfully seized of all and singular the above-granted premises, with the appurtenances, in manner following — that is to say, that the said A. B. is seized thereof for his life, as tenant by the curtesy; and that the said C. D. is seized of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in the reversion or remainder thereof, expectant upon the determination of the said estate by the curtesy.

748. Covenant of Seizin, by Executors.

And the said party of the first part, for himself, his heirs, executors, and administrators, does [*or, if several, say parties of the first part do jointly and severally, for themselves, their heirs, executors, and administrators*] covenant, promise, and agree, to and with the party of the second part, that the said M. N. died lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted premises, with the appurtenances [*subject as aforesaid*].

749. Covenant of Power to Convey.

And the said A. B., for himself and his heirs, executors, and administrators, does covenant, grant, and agree, to and with the said party of the second part, his heirs and assigns, that the said party of the first part [*or, the said A. B.*], at the time of the sealing and delivery of these presents, has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid.

750. Short Form of Covenant of Seizin and Power to Convey.

And the said A. B., for himself, his heirs, executors, and administrators, hereby covenants with the said Y. Z., his heirs and assigns, that he is lawfully seized in fee of the premises, and that he has good right to sell and convey the same.

751. Covenant for Quiet Possession.

And the said A. B., for himself and his heirs, executors, and administrators, does covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party [*or, parties*] of the first part, his [*or, their*] heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.

752. The Same; A Short Form.

And that the said Y. Z., his heirs and assigns, may forever hereafter have, hold, possess, and enjoy the same, without any suit, molestation or interruption, by any person whatever, lawfully claiming any right therein.

753. Covenant Against Incumbrances.

[Add, at the end of the covenant for quiet possession, these words:] and that said premises are free, clear, and freely and clearly acquitted, exonerated, and discharged of and from all, and all manner of former and other bargains, sales, gifts, grants, feoffments, devises, dowers, rights and titles of dower, uses, issues, fines, annuities, debts, duties, judgments, executions, recognizances, and all other estates, rights, titles, troubles, charges and incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done, or suffered, in anywise whatsoever, by him, the said A. B., or by any other person or persons whatsoever, having or lawfully claiming any estate, right, title or interest, of, in or to the same, or any part or parcel thereof [if conveyed subject to incumbrance, say: except as aforesaid].

754. The Same; A Short Form.

And that the said premises are, at the time of the execution hereof, free from all incumbrances.

755. Covenant for Further Assurance.

And the said A. B., for himself and his heirs, executors, and administrators, does covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that the said party [or, parties] of the first part [or, the said A. B.] and his [or, their] heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in or to the above-granted premises, by, from, under, or in trust for him or them, shall and will, at all time or times, hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel, learned in the law, shall be reasonably advised or required.

756. The Same; A Short Form.

And that I, the said A. B., and all persons hereafter claiming under me, will at any time hereafter, at the request and expense of the said Y. Z., his heirs or assigns, make all such further assurances for the more effectual conveying of the said premises, with the appurtenances, as may be reasonably required by me, him, or them.

757. Covenant Against Grantor's Acts.

And the said party of the first part, for himself and his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said party of the second part, his heirs, executors, administrators, and assigns, that he has not made, done, committed, executed, or suffered any act, matter or thing whatsoever, whereby or by means whereof the above-granted premises, or any part thereof, now are, or at any time hereafter shall or may be impeached, charged, or incumbered, in any manner or way whatsoever.

758. The Same; A Short Form.

And that the said grantor has not done or suffered anything whereby the title of the said premises to the said grantee can be frustrated or annulled.

759. Several Covenants by Grantors Against Their Own Acts Respectively.

And the said A. B. and C. D., for themselves, their heirs, executors, and administrators, do severally, and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only, covenant, promise, and agree, to and with the said Y. Z., his heirs and assigns, that they, the said A. B. and C. D., have not done, committed, executed, or suffered any act, matter, or thing whatsoever, whereby the above-granted premises, or any part thereof, is, are, or shall or may be impeached, charged, or incumbered, in any manner whatsoever.

760. Short Form of Covenants of Seizin and Warranty.

And the said grantor does hereby covenant with the said grantee that he is the lawful owner of the said premises in fee simple; and that he will warrant and defend the title against all future claims.

761. Covenant Against Nuisances.

And the said party of the second part, for himself, his heirs and assigns, does hereby covenant to and with the said A. B., his heirs, executors, and administrators, that neither the said party of the second part, nor his heirs or assigns, shall or will at any time hereafter, erect any buildings within forty feet of the front of said lot, except of brick or stone, with roofs of slate or metal, and will not erect or permit upon any part of the said lot any slaughter-house, smith-shop, forge, furnace, steam-engine, brass-foundry, nail, or other iron factory, or any manufactory of gunpowder, glue, varnish, vitriol, ink or turpentine, or for the tanning, dressing or preparing skins, hides or leather, or any brewery, distillery, or any other noxious or dangerous trade or business.

762. The Same; Another Form.

It is further covenanted and agreed by the party of the second part hereto, such agreement being evidenced by the acceptance hereof, that neither the party of the second part, nor his heirs nor assigns, shall or will at any time hereafter cause, or procure, or permit to be erected upon any part of the land hereby conveyed, during his or their ownership thereof, any dwelling-house which, when completed, shall be worth at a fair valuation less than the sum of dollars, when the front thereof, or of the lot, shall be upon either street, or street, or less than the sum of dollars, when elsewhere upon said premises, nor shall any cottage or other building be erected or permitted within fifty feet of the front line of the first-mentioned streets,¹ nor within twenty-five feet of the street line on any other lot on said premises, and that the said party of the second part, his heirs, executors, administrators, or assigns, or any of them, shall not, nor will at any time hereafter during his or their ownership, erect, make, establish, or carry on, nor permit, or cause,

¹ For other covenants on this subject, see general index.

or suffer to be erected, made, established, or carried on in any manner, on any part of the above-described and hereby granted premises, any slaughter-house, livery or cow or other stable, tallow chandlery, steam-engine, engine-house, smith-shop, forge, furnace, or brass foundry, or factory, soap factory, or any manufactory of gunpowder, glue, vitriol, ink, turpentine, oil, or naphtha, glass or varnish, or for the tanning, dressing, preparing or keeping of hides, skins, or leather, or any distillery or brewery, or place for the manufacture or sale of spirituous, malt, fermented or unfermented liquors, sugar bakery, or other manufactory, trade, business, or calling whatsoever, which may be in any way noxious or offensive to the neighboring inhabitants (the words "steam-engine," and "furnace," are intended as meaning those not used in dwelling-houses, or for elevator hoisting, or heating purposes), or erect, or build, or commence to erect or build, any building or edifice with intent to use the same, or any part thereof, for any of the purposes aforesaid, and that neither he nor they, during his or their ownership thereof, will use, procure, or permit to be used, any building which may be hereafter erected upon said premises, or any part thereof, for the purposes or uses above prohibited. But it is hereby expressly understood and agreed that this agreement shall not be enforced for damages personally against the party of the second part, his heirs or assigns, unless he or they shall be the owner or owners of the said premises upon which, and at the time when a violation of this agreement is made or threatened.

763. Covenant not to Build so as to Obstruct Light and Air.

And the said Y. Z., for himself, his heirs and assigns [*or, if leasehold property*, his executors, administrators, and assigns being the holders or holder, owners or owner of the indenture or lease above mentioned and herein assigned, or of any renewal of the term of years herein granted], doth hereby covenant, grant, promise, and agree to and with the said A. B. Company, their successors and assigns, that a strip of land feet in width, along the side of the lot of land above described [and demised by said lease], and forming part of said lot, shall not, nor shall any part of said feet in width be built upon by any building whatever, which may obstruct the light or air of the buildings of the said A. B. Company, their successors or assigns, now or hereafter to be erected on their land which adjoins said feet on the said side thereof.

764. Covenant to Maintain Fences.

And the said A. B., for himself, his heirs, executors, and administrators, covenants to and with the said parties of the second part, their executors, administrators, and assigns [*or, if a corporation, say, their successors and assigns*], that he will erect upon the easterly and westerly lines of said strip good, lawful, and sufficient fences to inclose the same, and, at his and their own cost and charge, maintain and keep the same in good repair [for the term of years].

765. Stipulation Against Implied Covenants.

And it is hereby further agreed by and between the parties to these presents, and the true intent and meaning hereof is, that neither these presents nor anything herein shall be construed or taken to be a covenant or covenants

of warranty, or of seizin of the said parties of the first part, or their successors, or to operate further than to pass the estate, right, title, and interest they may have, or may lawfully claim in the premises hereby conveyed.

766. Covenant to Stand Seized to Uses.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, counsellor-at-law, of the second part, WITNESSETH, that, for and in consideration of the natural love and affection which he heareth unto those to whom the estates are hereinafter limited, and for the advancement of C. B., his son, and others of his blood hereinafter mentioned, he, the said A. B., does hereby, for himself and his heirs, covenant, grant, and agree to and with the said Y. Z. and his heirs, that the said A. B. and his heirs shall and will, from henceforth, stand and continue seized of and in all [*here insert description of the premises*], together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, to and for the uses, intents, and purposes hereinafter limited—that is to say, for the use and behoof of the said A. B. for and during the term of his natural life, without impeachment of or for any manner of waste; and after his decease, then to and for the use and behoof of C. B., and his heirs and assigns forever.

IN TESTIMONY WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Signed, sealed and delivered in presence of [*Signature and seal.*]

[*Signatures of witnesses.*]

[*Add Acknowledgment or Proof, as in case of an ordinary Deed.*]

CHAPTER XXII.

DEBTOR AND CREDITOR.

A LETTER OF LICENSE is a written promise by creditors that they will give their debtor time for payment, and will not molest him meanwhile. A composition is an agreement to accept less than the sums due them respectively. It usually includes the substance of a letter of license.

Creditors who unite in such agreements are regarded as engaging not only with the debtor, but with each other. But any one who has signed may openly withdraw his assent, with the consent of the debtor, without the concurrence of the other creditors, before the accord has been fully executed.

Any secret arrangement by one of them with the debtor to secure an advantage over the others, renders the contract a fraud upon the others, and avoids it. Creditors first signing such an instrument, usually do so upon the expectation that others will also sign. If this is intended to be a condition, it should be expressly declared to be such at the time of executing and delivering the paper; and the most convenient way is to insert a clause to that effect as in Form 770 or any one may prefix such a condition to his signature, as in Form 432.

General terms in a letter of license or composition deed, extending to all the demands of the signers, are to be deemed restrained by sums set opposite their names, so as to operate only on the debts so specified. Hence, if it is intended to apply only to the debt specified, this intent should be expressed.

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767. Letter of License, Common Form.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, WHO HAVE HEREUNTO SUBSCRIBED OUR NAMES AND AFFIXED OUR SEALS, CREDITORS OF Y. Z., OF , SEND GREETING:

WHEREAS * the said Y. Z., on this day of , is indebted unto us, the several creditors hereunder named, in divers sums of money, which at present he is not able to pay and satisfy, without time be given him for payment thereof:

KNOW YE, THEREFORE, that we, the said several creditors, and each and every one of us, at the particular request of the said Y. Z., have given, and, by these presents, do give and grant unto the said Y. Z. full and free liberty, license, and authority to go about, attend, follow, and negotiate any affairs, business, matters, or things whatsoever, at any places whatsoever, without let, suit, arrest, attachment, or any other impediment to be offered or done unto the said Y. Z., or his property, by us, or any of us, or by the executors, administrators, partners, or assigns of us, or any of us, or by our, or any of our means, or procurement to be sought, attempted, or procured to be done, for and during months next ensuing the date hereof. And further, we, the said creditors hereunder subscribed, and each of us, do covenant and agree for ourselves, our executors, administrators, partners, and assigns respectively, and not jointly, or one for another, or for the executors, administrators, partners, or assigns of each other, to and with the said Y. Z., that we, or any of us, our executors, administrators, partners, or assigns, or any of them, shall not, nor will, during the time aforesaid, sue, arrest, attach, or prosecute the said Y. Z., for or on account of our respective debts, or any part thereof; and that if any hurt, damage, or hindrance be done unto the said Y. Z., either in body or property, within the aforesaid term of months next ensuing the date hereof, by us, or any of us, the said creditors, or by any person or persons, by or through the procurement or consent of us, or any of us, contrary to the true intent and meaning of these presents, then the said Y. Z., his heirs, executors, and administrators, by virtue hereof, shall be discharged and acquitted forever, against such of us, the said creditors, his and their executors, administrators, partners, or assigns, by whose will, means, or procurement he shall be arrested, attached, prosecuted, grieved, or damaged, of all actions, suits, damages, debts, charges, claims, and demands whatsoever, from the beginning of the world to the day of the date hereof.†

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the day and year first above written.

In presence of

{*Signature of witness.*}

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

768. The Same; With a Condition that the Debtor Pay by Installments.

[As in the preceding form to the † at the end, then adding the following:]

PROVIDED ALWAYS, and upon this condition, that if the said Y. Z., his executors, administrators, or assigns, do not well and truly pay unto us, the said creditors hereunto subscribed, our respective executors, administrators, or assigns, the sums of money to us by him owing, in manner following— that is to say, on the day of next ensuing the date hereof, one just part of our said debts, between us to be divided according to the proportions of our several debts by him owing, and on the day of , which will be in the year 18 , one other part of the present amount of our said debts, to be divided as aforesaid, and on the day of , which will be in the year , the residue of our said several debts, to be divided as aforesaid; that then, and from and after any default in any of such payments, this, our present letter of license shall be utterly void and of none effect, towards him and them of us to whom any such default of payment shall happen to be made; anything above written to the contrary notwithstanding.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the day and year first above written.

In presence of

[Signature of witness.]

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

769. Composition with Creditors.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, WHO HAVE HEREUNTO SUBSCRIBED OUR NAMES AND AFFIXED OUR SEALS, CREDITORS OF Y. Z., OF , SEND GREETING:

WHEREAS, * the said Y. Z. does justly owe and is indebted unto us, his said several creditors, in divers sums of money, but by reason of losses, disappointments, and other damages happened unto the said Y. Z., he is become unable to pay and satisfy us of our full debts, and just claims and demands, and, therefore, we, the said creditors, have resolved and agreed to undergo a certain loss, and to accept of cents for every dollar owing by the said Y. Z. to us, the several and respective creditors aforesaid, to be paid in full satisfaction and discharge of our several and respective debts:

NOW, KNOW YE, that we, the said creditors of the said Y. Z., do, for ourselves, severally and respectively, and for our several and respective executors and administrators, partners and assigns, covenant, promise, compound, and agree, to and with the said Y. Z., his [heirs], executors and administrators, by these presents, that we, the said several and respective creditors, executors, administrators, partners, and assigns, shall and will accept, receive, and take, of and from the said Y. Z., his [heirs], executors and administrators, for each and every dollar that the said Y. Z. does owe and is indebted to us, the said several and respective creditors, the sum of cents for and upon every dollar, in full discharge and satisfaction of the several debts and sums of money that the said Y. Z. owes and is indebted unto us; to be paid unto us, the said several and respective creditors, our several and respective executors, administrators, partners, and assigns, within months next after the date of these presents. And we, the said several and respective creditors, do severally and respectively, for ourselves, our several and respective executors, adminis-

trators, partners, and assigns, and not jointly for each other, or the representatives, etc., of each other, covenant, promise, and agree, to and with the said Y. Z., his executors and administrators, that the said Y. Z., his executors, administrators, and assigns, shall and may, from time to time, and at all times within the said term of months next ensuing the date hereof, assign, sell, or otherwise dispose of his property, at his and their own free will and pleasure, for and towards the payment and satisfaction of the said cents for every dollar the said Y. Z. owes and is indebted, as aforesaid, unto us, the said respective creditors; and that neither we, the said several and respective creditors, nor any of us, nor the executors, administrators, partners, or assigns of us, or any of us, shall, or will, at any time or times hereafter, sue, arrest, attach, or prosecute the said Y. Z. or his property and chattels, for any debt or other thing now due and owing to us, or any of us, his respective creditors aforesaid; so as the said Y. Z., his executors or administrators, do well and truly pay, or cause to be paid, unto us, his said several and respective creditors, the said sum of cents for every dollar he owes and is indebted unto us respectively, within the said space of months next ensuing the date hereof † [or, if several payments are to be made, state them as in the preceding form].

IN WITNESS [etc., as in the preceding form].

770. Letter of License or Composition Deed, to be Void, Unless all the Specified Creditors Sign.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, A. B., OF , C. D., OF [etc., naming all the creditors who are to sign], WHO HAVE HEREUNTO SUBSCRIBED OUR NAMES, AND AFFIXED OUR SEALS, CREDITORS OF Y. Z., SEND GREETING:

WHEREAS [continuing as in Forms 634 or 636, from the * near the beginning to the † near the end, and conclude thus]: PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of these presents, and of the said parties hereunto, that if all the said parties above named as creditors [or, if two-thirds in amount of the said parties above named as creditors, or otherwise, as may be agreed] shall not subscribe and seal these presents,¹ then, and in such case, the liberty and license hereby given and granted, and every clause, covenant, matter, and thing herein contained, shall cease and be utterly void, to all intents and purposes; anything hereinbefore contained, to the contrary thereof, in anywise notwithstanding.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day of , 19 . A. B. [SEAL.]

In presence of

[Signature of witness.]

C. D. [SEAL.]

E. F. [SEAL.]

771. Composition Deed, Allowing Debtor to Carry on Business Under Inspection of a Committee of the Creditors.

THIS INDENTURE, made this day of , 19 , between the several creditors of Y. Z., whose names and seals are hereunto subscribed and affixed, parties of the first part [or, if it is intended that all shall sign in order to

¹ A condition inserted that other creditors shall assent, without anything to indicate that the assent is to be by executing the paper, is satisfied by proof of assent on their part evidenced in other ways. *Fellows v. Stevens*, 24 Wend. 294.

make the composition effectual, name them thus]: between A. B., of _____, C. D. and E. F., composing the firm of C. D. & Co., of _____, and G. H., of _____, creditors of Y. Z., parties of the first part, and the said Y. Z., of _____, merchant, party of the second part, WITNESSETH:

WHEREAS, the said Y. Z. is indebted to the several persons of the first part, in the several sums of money placed opposite to their respective names in the schedule hereunto affixed; and,

WHEREAS, at a meeting of the creditors of the said Y. Z., held on the day of _____, 19____, at _____, it was made to appear to them, that by reason of losses and obstacles in trade, he was unable to pay the several demands upon him immediately, but that his stock in trade, and his other estate and effects were sufficient for that purpose, whereupon it was mutually agreed by and between the parties hereto, that the term of _____ years should be given to the said Y. Z. to collect in and dispose of his said estate and effects, and that, in the meantime, he should be permitted to manage and improve the same under the inspection of the parties of the first part by a committee of their number to be by them chosen, and by them, their executors, administrators, and assigns, renewed from time to time for that purpose, under and subject, nevertheless, to the conditions, stipulations, and agreements hereinafter contained respecting the same: Now in consideration thereof, and of the covenants and agreements hereinafter contained, on the part of the said Y. Z. to be performed, the said parties hereto of the first part, and each of them for themselves respectively, and their respective partners, and his and their several and respective executors, administrators, and assigns, but not any one of them for any other of them, nor for the executors, administrators, partners, or assigns, of any other or others of them, do:

I. Give and grant unto the said Y. Z., free liberty and license to carry on, conduct, and manage his said trade or business of _____, and all his other affairs and concerns, and collect, get in, and sell and dispose of, convey and assign all or any part of his estate, debts, and effects, under the inspection and subject to the approbation and control of the said parties of the first part, by their committee as aforesaid, from henceforth until the _____ day of _____, 18____, if he, the said debtor, shall so long live, and continue to observe and perform the several covenants and agreements hereinafter contained, on his part or behalf to be observed or performed; and they agree with him and with each other that they, the said parties of the first part, creditors as aforesaid, or any or either of them, shall not nor will, during the time or period, and observance and performance aforesaid (for any cause or consideration now existing), sue, arrest, attach, or prosecute him, the said Y. Z., or his property, or in any way impede or molest him in the carrying on or management of his said business or concerns, or the sale or disposition of his estate or effects, under such control and inspection as aforesaid, nor seize or possess themselves of, or in anywise attach, or intermeddle with his goods, estates, property, or effects in anywise whatsoever.

[If desired to add a clause that creditors violating the license shall forfeit their debts, it may be like the last half of Form 634.]

II. And for the purposes aforesaid, the said party of the second part hereby covenants and agrees with the parties of the first part, to make and deliver to them or their committee within a reasonable time, a full and true account of all the creditors of the said Y. Z., showing the place of residence of each

creditor, if known; and if not known, the fact to be stated; the sum owing to each creditor, and the nature of each debt or demand, whether on written security, account, or otherwise; the true cause and consideration of indebtedness in each case, and the place where it accrued; and a full and true inventory of all the estate, both real and personal, in law and equity, of the said Y. Z.; of the incumbrances existing thereon; and of all the books, vouchers, and securities relating thereto.

III. And he further covenants and agrees as aforesaid to manage and collect his assets, and to carry on his said business faithfully and diligently for the purposes of these presents, under the direction and control of the parties of the first part, as they may by their said committee, or otherwise, direct, according to the true intent and purpose of these presents.

IV. And he further covenants and agrees as aforesaid, that after payment of just and necessary legal expenses, and the expenses of conducting said business (including a commission of per cent. upon the net proceeds as a compensation for the committee hereinafter provided for), and also after reserving to said Y. Z. so much as may be necessary for his reasonable support, which is not to exceed the rate of dollars per month, nor to exceed the sum of dollars in any one month, he will, subject as aforesaid, pay over and distribute the proceeds of said assets and business, for and towards payment and satisfaction of the sums the said Y. Z. owes as aforesaid unto us the said respective creditors, *pro rata* (specific liens, however, already secured by any creditors, to be first discharged out of the property which is bound by such liens).

V. And the party of the second part hereby further covenants and agrees as aforesaid, that he will not, during such time, make any assignment or transfer of any of his property, with any preference for any creditor; that he will keep just and true accounts of all his transactions, subject at all times to the inspection of the parties of the first part and their said committee, and will render to the said committee, once in each , a statement of his accounts, showing [*here specify what is desired*]; which accounts, as well as the one hereinbefore provided for, shall be verified by him on oath, if so required.

VI. And he further covenants and agrees as aforesaid, that he will not, during the period contemplated by these presents, indorse or accept for accommodation, or become surety in anywise for any person, or voluntarily incur any liability except in the course of his said business, and will not enter upon or undertake any other business or enterprise whatever.

VII. And the said party of the second part further covenants and agrees as aforesaid, that he, the said Y. Z., his heirs, executors, and administrators, shall and will, well and truly, pay or cause to be paid unto all and every the said creditors, parties hereto, their respective executors, administrators, partners, or assigns, or other person or persons by them respectively authorized to receive the same, their full and whole debts and demands, at or before the expiration of the said term of years, in the manner hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents.

VIII. And for the purposes aforesaid, the said parties of the first part have appointed and hereby do appoint A. B. and E. F. their committee, as their agents and attorneys, to act until otherwise ordered, or until others are ap-

pointed in their place, by the parties of the first part, and with full power and authority to do, direct, and assent to all and any acts, matters, and things whatsoever, relative to the matters or things aforesaid, as they, in their discretion, shall at any time and from time to time hereafter think fit and expedient, as fully as the parties of the first part might do if personally present.

IX. And such committee are also empowered to nominate and appoint one or more clerks, or other persons, to assist the said Y. Z. in the management of his said trade or business, at such salary or wages as they shall think fit; and are also empowered to give bail, or other security, or cause it to be given, if the said Y. Z. or his property shall be arrested, attached, or taken under process of law by any of his creditors, or persons claiming so to be; and the said committee may contest, or otherwise act concerning the debt or debts of any such creditor or claimants, at the expense of the estate and effects of the said Y. Z., as they shall think fit and necessary for the purposes aforesaid.

X. And it is hereby further covenanted and agreed, by and between the parties hereto, that if, by reason of any unforeseen cause, not wilfully occasioned by the said Y. Z., any delay shall take place in the final settlement of his affairs, during his lifetime, so as to prevent the several creditors, parties hereto, from receiving the full amount of their respective debts, at or before the expiration of the said term of years, hereby limited for winding up the concerns of the said Y. Z., and for payment of his creditors in manner aforesaid, then and in such case it shall be lawful for the said committee, and they are hereby fully authorized and empowered, if they shall think proper, without any further consent of the said creditors than is hereby given, to prolong or extend the said term for a period not exceeding months, to be computed from the expiration of the said term, by an indorsement under the hands of the said committee being made upon these presents to that effect, and thereupon the said committee shall forthwith notify said parties of the first part of such extension; and that thereupon all and every the said creditors, parties hereto, their executors, administrators, partners, and assigns, and the said party of the second part, and his heirs, executors, and administrators, shall continue to be bound by the covenants and agreements herein contained, in the same manner, for such further period, to all intents and purposes, as if the whole term had been originally limited for that purpose.

XI. Provided always, nevertheless, and these presents are upon this express condition, that if the said Y. Z. shall die within the period aforesaid, or if he shall make default in performance of either of the covenants or agreements hereinbefore contained on his part to be performed, or in case any of the creditors of the said Y. Z. whose debts respectively exceed the sum of dollars (except only such of them as having other securities shall choose to rely thereon), shall not duly execute or otherwise accede to these presents [*or, if all the intended parties are named in the caption, say,* or in case any of the hereinbefore named parties of the first part shall fail to execute these presents] within months next after the date hereof, then, and in either of the said cases, this indenture, and everything herein contained, so far as the same respectively tends to restrain the said creditors from suing for and recovering his, her, or their respective debts, within the time aforesaid, shall be absolutely void.

IN WITNESS [*etc., as in Form 768*].

[SCHEDULE.]

772. Trust Composition Deed, after Assignment of Debtors.

THIS AGREEMENT, made between A. B., C. D., and E. F., of the city of _____, county of _____, state of _____, carrying on a general planing-mill business under the firm name and style of A. B. & Co., at said city of _____; and said A. B. and C. D., carrying on an iron-works business at the same place, under the same firm name, parties of the first part, and the other parties signing this agreement, creditors of the said firms, parties of the second part, WITNESSETH, that,

WHEREAS, the said above-mentioned firms have been unable to meet all their debts as they fell due, and have made general assignments for the benefit of their creditors, the first above-named firm to Y. Z., and the second above-named firm to V. W., and said parties of the first part desire to make a composition agreement as hereinafter mentioned, with their creditors, and to supersede and vacate said assignments, and to procure the return of the assigned property, to the end that they may continue their business, and make the best disposition possible of the firm assets and the real estate interests of the several parties of the first part, for the payment of their debts, and for the purpose of providing for and securing the payment of all the debts of said parties of the first part, and of said firms as hereinafter provided.

NOW, THEREFORE, the firms and individuals named above as parties of the first part hereby agree, jointly and severally, to pay fifty per cent. of the legal indebtedness, except the indebtedness preferred in the said assignment, or otherwise secured legal indebtedness, of each of the said firms of A. B. & Co., without interest, in manner following, viz.:

To give to each of their creditors four notes, each for an eighth part of the amount of his claim, such notes to be payable respectively in six, twelve, eighteen and twenty-four months from their date, such notes to be given and dated at the time this composition agreement shall be signed by all the creditors,—the payment of said promissory notes to be secured by a mortgage to be executed by said firms upon all the real estate belonging to either and both of said firms, and to be further secured by mortgages to be executed by the individual members of said firms upon all real estate owned by them respectively, such mortgages to be subject to existing incumbrances, and to be executed to S. T. M., of the city of _____, county of _____, state of _____, trustee for said creditors, such mortgages to be conditioned upon the failure by said parties of the first part, to pay said notes at maturity, or within ten days thereafter, and to be fully satisfied by the payment of all said notes.

It shall also be provided in said mortgages and each of them, that said trustee named therein shall release from said mortgage any parcel or portion of said mortgaged premises, in case the parties of the first part, or either of them, shall make a sale of any part thereof at its fair and reasonable value; and in case of a difference of opinion as to such value between said trustee and the owners, parties of the first part, desiring to make such sale, said owner and such trustee shall agree upon a third person, whose decision in respect thereto shall be final; and the proceeds of any such sale above the prior incumbrances shall be paid to such trustee, to be distributed by him *pro rata* among all the creditors, or to be disposed of by him for the benefit of all the creditors as may hereinafter be provided; and such trustee shall have the discretion to give credit for such a part of the purchase moneys upon any such

sale, as he may deem for the interest of the creditors, upon security being furnished to such trustee for the payment thereof, which shall be deemed sufficient and satisfactory to him.

IT IS FURTHER AGREED, that in case any default shall be made in the payment of the notes hereinbefore agreed to be given, by the parties of the first part, payable in six months, or in the payment of the notes so to be given by them, payable either in twelve or eighteen or twenty-four months, for a period of twenty days after they become due, the said trustee shall thereupon have the right and authority to foreclose said mortgage or mortgages as he shall deem requisite to pay in full the amount of such notes as shall then be due, and apply the net proceeds therefrom, after paying necessary costs and expenses of foreclosure, to such payment.

And the said parties of the first part, and each of said parties for himself, agree, that they will use their best efforts in carrying on their business, and in handling and disposing of the assets of said firm and of their individual property, to pay to each of said creditors the full amount of said fifty per cent. of his indebtedness as hereinbefore provided.

The said parties of the first part agree to pay the remaining fifty per cent. of said indebtedness in manner following, viz.:

To transfer to said trustee above named _____ shares of the stock of the _____ Company, of the par value of _____ dollars, which is now held and owned by said A. B. and C. D., or their assignee, and to procure new certificates therefor to be issued to said trustee, who shall have the right to vote thereon as owner at corporate meetings; the same and all dividends thereon to be held by said trustee until _____ years from the time of the execution of this agreement by all the creditors; provided, however, that in case the parties of the first part shall pay such remaining fifty per cent. of their legal indebtedness to the several creditors, parties of the second part, at any time within the said _____ years, or at the expiration thereof, with interest at _____ per cent., said trustee shall retransfer such stock to the parties of the first part from whom he had received the transfers thereof, but if such payment shall not be made by the parties of the first part within said _____ years, then the trustee, at the expiration of such _____ years, shall either divide the stock and accrued dividends *pro rata* among the creditors, or, as he may deem best for all the interests of all the creditors, sell and dispose of all said stock and divide the proceeds and any dividends thereon among said creditors in proportion to the respective amounts due them.

AND IT IS FURTHER AGREED by the creditors, parties of the second part, and each of them, that the payment by the parties of the first part of their notes for six, twelve, eighteen and twenty-four months for fifty per cent. of the amount of their debts as first above provided, without interest, and the payment of the remaining fifty per cent. of such debts within said two years, with five per cent. interest thereon, or in default of such last-mentioned payment within said two years, the said stock so transferred to and held by such trustee, shall be in full payment and satisfaction of the debts and claims of each of the creditors of said firms and individuals, parties of the first part.

IT IS FURTHER AGREED, that in all cases in which there are persons who are liable as sureties or as guarantors for the payment of any of the indebtedness of the parties of the first part, or for or upon any promissory notes or other

paper representing any such indebtedness, such sureties, or any of them, shall not be released by the provisions of this agreement, or their liability as such sureties in any way discharged or affected by the provisions of this agreement; it being the intent hereof to reserve all rights and remedies against any and all sureties or guarantors for or upon any such indebtedness, as though this agreement had not been made; and to the end that any creditors may enforce all their rights and remedies against any such sureties or guarantors, it is agreed that any and all notes or other paper representing any of such indebtedness secured by a surety or guarantor, as aforesaid, may, at the option of such creditor, be retained by him until he shall have enforced or exhausted his remedies thereon against any such surety or guarantor; and in the meantime the notes to be executed by the parties of the first part for fifty per cent. of the indebtedness, so secured, shall be delivered to the trustee herein named, to be delivered by him to such creditor whenever he shall deliver up the notes or other evidences of such debt held by him.

IT IS FURTHER AGREED, that, if during the said two years any mortgage upon the property upon which a mortgage shall be executed to said trustee under this agreement, or upon any parcel thereof prior to the mortgage or mortgages so to be executed to such trustee, shall be foreclosed, and during the pendency of such foreclosure and before a sale thereunder the said trustee shall receive or have in his hands any funds of the creditors received by him pursuant to this agreement, he may use and apply the same, or a part thereof, for the protection of the interests of the creditors in the property upon which such foreclosure is being made, according to his best judgment and discretion, and shall give notice to all the creditors, through the mail, of his determination in respect to such application of funds as soon as such determination is reached.

The trustee herein named shall have such powers as are necessary to perform and accomplish the duties and the trusts expressly committed to him by this agreement; and he shall make and render, at least every quarter, an itemized statement to all the creditors of the moneys received and expended by him, and of the work performed by him, as such trustee; and shall be entitled to receive compensation for his services as such trustee, the amount thereof to be fixed by the advisory committee hereinafter named.

IT IS FURTHER AGREED, that upon the transfer to said trustee, as hereinbefore provided, of the stock of said parties of the first part in the _____ Company, said trustee shall issue to each of the creditors a certificate showing the amount of the stock so held by him, the use for which it is so held, and the interest of such creditor therein, as nearly as he can ascertain the same; which certificate shall be assignable and transferable, upon condition that each assignee or transferee shall forthwith give notice of his interest therein to the trustee.

IT IS FURTHER AGREED between the parties of the first part, and each of them, and the parties of the second part, that in case of the death of either or any of the parties of the first part, the survivors of said parties of the first part shall have full power and authority to fully execute, and shall fully execute the terms of this agreement, and shall have the right to continue to carry on, according to their best judgment, the business of said firms of A. B. & Co., or either of them, for the purpose of carrying out the provisions of this agreement according to the intent and purpose thereof; and that the heirs, personal representatives, and assigns of each and all the parties hereto are bound by this agreement.

IT IS FURTHER AGREED, that upon this agreement being duly executed by all the creditors, except the preferred creditors, named in the assignment, and those who are secured otherwise, the said assignees shall be at liberty to re-assign and reconvey to said firms, or the persons composing said firms, any and all property assigned in and by said general assignments, without any further liability to or to account to said creditors, or any of them, by reason of any matter growing out of said assignments, or anything done thereunder by order of any court or otherwise, in case the said assignees shall duly re-assign and reconvey all the property which has been assigned to them by such general assignments, and shall deliver such assigned property to their said assignors, parties of the first part, less their proper fees, expenses, and other disbursements, and less such assets and amounts as they have disposed of, paid and incurred, or become liable for, in and about the due and proper execution of said trusts prior to the transfer and delivery to be so made by them, and to be duly accounted for by them.

IT IS FURTHER UNDERSTOOD, that this agreement shall become binding and take effect only when all the creditors preferred in said general assignments, and all creditors who are otherwise secured, shall execute, in due form, an agreement or agreements consenting that all said assigned property be re-assigned or reconveyed to the assignors, parties of the first part hereto, as above set forth.

The following-named persons are hereby appointed an advisory committee, viz.:

to confer and advise with the said trustee in respect to all matters relating to his duties as trustee concerning which he may request such conference and advice, and to make such investigation in respect to all matters connected with the carrying out of this agreement, and to make such report from time to time in respect thereto to the several parties hereto, as such committee may deem advisable, and to audit any bills for expenses for counsel or clerk hire that may be incurred or paid by said trustee in the performance of his duties, and any such sums so audited and approved by such committee, and the compensation of such trustee, and the expenses of such committee shall be paid by said parties of the first part, and the same shall be deducted *pro rata* from the next succeeding payment under this agreement, unless funds shall come to his hands from foreclosures or otherwise, in which case he may retain such expenses therefrom; and in case of death or disability of such trustee, said advisory committee shall have authority to appoint another person trustee in his place.

IN WITNESS WHEREOF, the parties of the first part hereto have hereunto set their hands this day of , 19 .

In presence of

A. B. & CO.,
A. B.,
C. D.,
E. F.
A. B. & CO.,
A. B.,
C. D.

IN WITNESS WHEREOF, the parties of the second part hereto have hereunto set their hands, this day of , 19 .

In presence of

773. Composition Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , BY AND BETWEEN J. W., of the city of , in the county of , and state of , and L. P. W., of the same place, parties of the first part, and B. H. H., of the said city of , party of the second part, and the other parties whose names are hereunto subscribed, and who are respectively creditors of said parties of the first part, in or about the amounts set opposite their respective names, and who, by signing this instrument, severally become parties thereto, parties of the third part, WITNESSETH:

(1) WHEREAS, the said W. and W. have heretofore been, and now are copartners in business, under the firm name and style of "W., W. & Co.;" and as such have hitherto carried on the business of sugar refiners, at their refinery, at the corner of and streets, in the said city of , having also their counting room and place of business at No. , street, in the city of New York; and,

(2) WHEREAS, the said firm has become, and is indebted to the several persons whose names are hereunto affixed as parties of the third part, in or about the amounts set opposite to their respective signatures hereunto; and,

(3) WHEREAS, the said W. and W., by reason of losses and misfortunes in business, have become and are unable to pay in full all their indebtedness to their creditors, and have disclosed to them their situation in business, with a statement of their assets and liabilities, and have offered and proposed to transfer, assign, set, and deliver over to their said creditors, or to such person as their said creditors might select and appoint, their assets, property, estate, and effects, as is hereinafter more particularly set forth, for the purpose of being converted into money and applied in equal shares and proportions to the payment of all the just debts and liabilities of the said parties of the third part hereunto, upon the condition, however, that, upon the making and delivery of such transfer and assignment as aforesaid, they, the said W. and W., should be released and discharged from all their debts, liabilities, and obligations to the said parties of the third part hereunto; and,

(4) WHEREAS, the said parties of the third part hereunto, such creditors as aforesaid of the said W. and W., have accepted the said offer and proposition of the said W. and W., and have thereupon selected the said B. H. H., the party hereto of the second part, as the assignee and trustee, to receive such assets and property of said firm, and convert the same into money, and distribute the same ratably among the said parties of the third part hereunto; and,

(5) WHEREAS, the said W. and W. were, at the time of their failure in business as aforesaid, and still are indebted upon certain trust and guardian accounts owing by them, as follows, viz.:

| | | |
|--|-----|-------|
| To the estate of W. P. H., balance of account..... | | \$ |
| To Mrs. M. L. W. | " " | |
| To Mrs. E. W. | " " | |
| To C. W. (guardian account) " | " " | |
| To C. W. (trustee account) " | " " | |
| To Mrs. S. M. W. | " " | |

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(6) AND WHEREAS, the said W. and W. were at the same time entitled to receive and be paid certain other sums of money upon trust and guardian accounts, as follows:

| | |
|---------------------------------------|----|
| From the estate of H. L. W., Sr. | \$ |
| From C. W. | |
| From Mrs. M. L. W. | |
| From Mrs. M. E. A. W. | |
| From the estate of Mrs. E. A. E. | |

\$

(7) AND WHEREAS, it has been, and is agreed by and between all the parties to this instrument that the said assets and liabilities of the said W. and W., connected with the said trust and guardian accounts, mentioned and set forth in paragraphs numbers 5 and 6, above, shall not be in any manner taken into account, referred to or provided for in, by or under this instrument, and that the said assets in said paragraph number 6 mentioned, should not be assigned or transferred hereby, but should continue to be held by said W. and W., for the purpose of providing for the said liabilities upon the said trust and guardian accounts in said paragraph number 5 mentioned, and that such trust and guardian accounts should not be in any manner discharged, affected, or impaired by reason or in consequence of the making of this instrument, but that, after applying such assets to the payment of such liabilities as aforesaid, so far as the same will apply, the balance of the said liabilities should be left to be hereafter satisfied and discharged by the said W. and W., and should remain a debt against them for that purpose;

(8) NOW, THEREFORE, in consideration of the premises, and of the sum of one dollar to said parties of the first part in hand paid by said party of the second part, at or before the ensembling and delivery of these presents (the receipt whereof is hereby acknowledged), and for the purpose of carrying into full and complete effect the arrangement and agreement so as aforesaid made and entered into between the said parties of the first and third parts hereto, they, the said parties of the first part, HAVE granted, bargained, aliened, remised, released, conveyed, confirmed, sold, assigned, transferred, and set and delivered over, and by these presents, do grant, bargain, alien, remise, release, convey, confirm, sell, assign, transfer, and set and deliver over unto the said party of the second part, ALL AND SINGULAR the lands, tenements, hereditaments, fixtures, engines, machinery, implements, utensils, leases, and leasehold interests, goods, chattels, wares, merchandise, stock in trade, personal property, moneys on deposit in bank, or due or owing to them from any person or persons whomsoever and howsoever evidenced, and all other, the property, estate, assets, and effects, real or personal, whatsoever and wheresoever, of them, the said parties of the first part, or either of them, as members of the said copartnership firm as aforesaid, or as individuals, including all policies of insurance against loss by fire upon any of the said property, but not including or hereby passing or transferring any policy of insurance on the life of either of said parties of the first part: Saving and excepting the said claims and demands so due and owing to them, the said W. and W. upon the said trust and guardian accounts, as specified in said

paragraph number 6. And also saving and excepting such household furniture and other personal property as is by law exempt from levy and sale upon execution. (It being, however, understood, provided, and agreed that the schedule hereunto annexed and made part hereof, and marked "Schedule A," is intended to be a schedule and inventory, as nearly full and complete as may be, of all the property, assets, and effects, real and personal, of the said firm of W., W. & Co., which are intended to pass under this assignment, and also that for the more convenient transfer of the legal title in fee of the said lands and real estate, three deeds, bearing even date herewith, have been made, executed, and delivered by the said J. W. and E., his wife, and the said L. P. W., and Mary, his wife, and one deed by the said J. W., and his said wife, to the said B. H. H., conveying to him all the real estate and landed property mentioned and referred to in the said inventory "Schedule A," released and freed from all dower rights and interests of the said wives of said parties of the first part.)

TO HAVE AND TO HOLD the said property, real and personal, unto the said party of the second part, his heirs, executors, administrators, and assigns forever:

(9) IN TRUST, nevertheless, and upon the special confidence, trust, proviso, and condition, that the said party of the second part hereunto shall immediately on the execution and delivery to him of this instrument, and of the said four deeds of conveyance, enter into and upon and take possession of all the said lands and real estate, and shall reduce to his possession all the personal property, assets, and effects of every nature and description so transferred and assigned to him as aforesaid, and shall thereupon sell and dispose of all said property, real and personal, assets and effects, as early as may be, and convert the same into money, and shall thereupon, after the payment of the legal and necessary expenses of carrying the said trust into effect, pay and apply all the residue and remainder of the proceeds of all the said property ratably and in equal proportions to the payment and satisfaction of the debts so due or owing as aforesaid to all the creditors of the said parties of the first part hereunto who shall become parties to and shall sign and accept this indenture; and said party of the second part shall pay in full all such debts so due or owing as aforesaid to the said parties of the third part, or any of them, if the said proceeds of the said property, real and personal, assets and effects, shall be sufficient therefor; and, after such payment, he shall return the surplus, if any, unto the said parties of the first part, their executors, administrators, or assigns. But in case the said proceeds shall not be sufficient to pay and satisfy in full all such debts and demands of the said creditors of the said parties of the first part, who shall sign and become parties to this instrument, then the said proceeds shall be applied in equal proportions to the payment of the said debts and liabilities so due and owing to the said parties of the third part.

(10) IT BEING HOWEVER EXPRESSLY UNDERSTOOD, PROVIDED, AND AGREED that the said parties of the first part do not hereby undertake, and are not required to assign, and do not assign, transfer, or set or deliver over any of the said liabilities connected with the said trust and guardian accounts hereinbefore in said paragraph number 6 specified, and that none of the creditors of the said parties of the first part upon the said trust and guardian account, hereinbefore in said paragraph number 5 specified, is required to become

party to this instrument, or to give, grant, or make any release or discharge to the said parties of the first part, or either of them, from such liabilities as are mentioned in said paragraph number 5.

(11) IT IS HEREBY FURTHER UNOERSTOOD, PROVIDED, AND AGREED, and the said several and respective parties of the third part herenunto as such creditors of the said firm of W., W. & Co., acting and agreeing severally and respectively for himself and themselves, and not the one for the other, do hereby severally covenant, promise, and agree that they, the said several and respective creditors, do hereby accept such transfer and assignment as aforesaid by this instrument and by the said four deeds of conveyance for the said lands and premises hereinbefore mentioned to the said B. H. H., as a full accord, satisfaction, payment, and discharge, so far as they, the said J. W. and L. P. W., are concerned, of the several and respective debts, claims, and demands of said several and respective creditors against them, the said W. and W., as a firm, or as individuals, and do hereby agree to look for the satisfaction of their said several and respective claims and demands against the said firm of W., W. & Co., to the property, assets, and effects so as aforesaid transferred, assigned, conveyed, and set over to the said trustee; and, upon the due execution and delivery of this instrument of assignment and the said four deeds of conveyance, and upon the due delivery, transfer, and setting over of the said assets, property, and effects to the said party of the second part, the said several and respective creditors of the said W., W. & Co., so signing this instrument and becoming parties hereto, do severally and respectively, and each for himself or themselves, and not the one for the other, forever remise, release, acquit, and discharge them, the said J. W. and L. P. W., and each of them, their, and each of their executors and administrators, and also all their future or hereafter acquired earnings, property, estate, and effects, of and from all claims, demands, debts, liabilities, and cause or causes of action whatsoever, which at the time of such execution and delivery of this indenture, and the said four deeds of conveyance, shall or may be due or owing from them, the said parties of the first part, or either of them, unto any of the parties hereto of the third part, by reason of any matter, fact, or thing whatsoever from the beginning of the world to the day of the execution and delivery hereof.

(12) AND for and in consideration of the premises, and especially of the said conveyances and releases of dower as aforesaid, by them, the said Elizabeth W. and Mary W., the said parties of the third part herenunto, acting and agreeing severally and respectively for himself and themselves, and not the one for the other, do hereby severally further covenant, promise, and agree, to and with them, the said Elizabeth W. and Mary W., and also with their said husbands, the said J. W. and L. W., that such release and discharge of them, the said J. W. and L. P. W., as aforesaid, hereinbefore set forth and contained, shall on the terms and conditions aforesaid be full, complete, and effectual forever.

(13) AND the said party of the second part hereby accepts the trust, transfer, and assignment hereinbefore set forth and contained, and undertakes and agrees to carry the same into effect, in the manner and upon the terms and conditions aforesaid, and to apply the proceeds of all such property, estate, and effects in the manner hereinbefore specified and set forth.

(14) AND the said several and respective creditors of the said firm of W.,

W. & Co. hereby assent to such transfer and assignment as aforesaid, and agree to the accord and satisfaction, release, and discharge aforesaid. It being, however, expressly understood, provided, and agreed by all the parties hereunto, that this instrument of assignment, and the said four deeds of conveyance hereinbefore mentioned, shall not take effect or become in any manner binding upon the said parties of the first and second parts hereunto, unless and until, and upon the express condition that all the creditors of the said firm of W., W. & Co. (save and except only the said creditors of the said W., W. & Co., upon the said trust and guardian accounts hereinbefore expressly mentioned and specified in said paragraph number 5), shall sign, seal, execute, and deliver, and thereby duly become parties to this instrument, and accept of the trusts and provisions hereinbefore created, and shall so give to the said W. and W., the release, discharge, and satisfaction and accord hereinbefore set forth and contained.

IN WITNESS WHEREOF, the said parties of the first and second parts have hereunto set their hands and seals, the day and year first above written; and the said several creditors of the said W., W. & Co. have also on the same day hereunto respectively set their hands and seals, and have also respectively set opposite thereto the amounts, as nearly as may be, of their several and respective claims, debts, and demands against the said W., W. & Co. It being, however, understood, provided, and agreed that any error in the specification of the amount of any such debt, demand, or claim against the said W., W. & Co., shall not thereby invalidate such release and discharge as aforesaid, but that all the claims and demands against the said W. and W., or either of them, of any of the creditors entering into and becoming parties to this instrument shall be released and discharged in the manner and upon the terms and conditions hereinbefore set forth. This instrument being executed in triplicate.

W., W. & Co. [SEAL.]
 Per J. W.
 J. W. [SEAL.]
 L. P. W. [SEAL.]
 B. H. H. [SEAL.]

| | Names of creditors of W. W. & Co. signing the foregoing instrument and becoming parties of the third part thereto. | Seals. | Amount of their debts against W. W. & Co. as nearly as may be. | |
|------------|---|----------------|--|----|
| | | | \$ | c. |
| Bank seal. | B. H. H. & Co., by B. H. H. B. of A., per , Prest., etc. [Signatures, sales and amounts of debts of other creditors.] | L. S. L. S. | | |

STATE OF , }
 City and County of , } ss.

On the day of , A. D., 19 , before me personally appeared J. W., to me personally known, and known to me to be a member of the firm of W., W. & Co., and who acknowledged to me that he signed, sealed, executed, and delivered the foregoing instrument in the firm name of W., W. & Co., and that he signed the same by the direction of the said firm, and for and in their behalf for the purposes and uses therein mentioned and described.

And on the said day of , 19 , personally appeared before me, J. W., L. P. W., and B. H. H., each to me personally known, and known to me to be the persons described in, and who executed the foregoing instrument, and each of whom acknowledged to me that he executed the said instrument for the purposes and uses therein mentioned and described.

And on the said day of , 18 , before me personally appeared B. H. H., to me personally known, and known to me to be a member of the firm of B. H. H. & Co., and who acknowledged to me that he signed, sealed, executed, and delivered the foregoing instrument in the firm name of said B. H. H. & Co., and with the consent and by the direction of the said firm, and for and in their behalf for the purposes and uses therein mentioned and set forth.

[*Continue acknowledgment to cover all creditors.*]

SCHEDULE A,

Annexed to and forming a part of the foregoing instrument of assignment, and intended to contain an inventory, as nearly full and complete as possible, of the property, assets, and effects of the said firm of W., W. & Co., and of the said J. W. and L. P. W., mentioned in and transferred by the said foregoing assignment. [*Here insert list of lands and other property.*]

774. Minute of Creditors' Meeting Agreeing on a Composition.

At a meeting of the creditors of Y. Z., of , merchant, held on the day of , 19 , at , it is agreed as follows: that is to say, we, the creditors of the said Y. Z., whose names are hereunder written, severally agree for ourselves, and for our respective executors, administrators, partners, and assigns, to and with each other, and to and with the said Y. Z., his executors and administrators, to accept and receive the sum of cents on the dollar for all that he owes to us, the same to be in full satisfaction of the debts or sums severally due to us from him, provided that the said sum of cents for every dollar be paid severally unto us, or to our respective partners, executors, administrators, or assigns, within the space of days from the day of the date hereof; and in default thereof, this agreement, and everything herein contained, shall be void and of none effect towards him and them of us, to whom any such default of payment shall happen to be made.

IN WITNESS [*etc., as in Form 637*].

CHAPTER XXIII.

DEEDS.

The word "*deed*," in its broadest signification, imports any instrument in writing, signed, sealed, and delivered, as the act of the person making it. The term is more commonly used, of conveyances of land, in contradistinction to bonds, mortgages, leases, powers of attorney, etc.; and accordingly, in this work, such other instruments form the subjects of separate chapters.

Deeds are sometimes divided into two kinds, viz., A deed poll, which is the deed of the grantor alone, and a deed indented, which is the mutual deed of both parties, or where both parties join. This distinction, however, has been largely done away with. See note to Form 775, *post*.

Throughout the United States, the form of conveyance is usually what is known in English conveyancing as the bargain and sale deed. Such an instrument, in its orderly form, states that the one party, naming him, in consideration of a specified sum of money, the receipt of which is acknowledged, grants, bargains, and sells to the other party, naming him, certain described premises, with such appurtenances, upon such conditions, or subject to such reservations, as may be expressed; to be held by the grantee for life, or by him and his heirs and assigns forever, or upon trust, etc., or otherwise, according to the estate intended to be conveyed. Then follow such covenants respecting the title to the property or the use of it, as the parties agree upon; and in witness of the whole, the grantor, and sometimes the grantee also, signs the instrument.

The first requisite of a valid deed is, that there be competent parties to contract, and that they be sufficiently designated in the instrument. If the parties upon either side are copartners, their designation and signature should be by their individual names, not by the firm name.

Secondly. There should, in order to sustain a deed as against creditors and subsequent purchasers, be a consideration, and it is advisable that the consideration be expressed. Where there is no actual consideration, it is usual to insert a nominal one, commonly one dollar.

Thirdly. The conveyance must be reduced to writing upon paper or parchment. The first part of the instrument,— which states the names of the parties, the consideration, the transfer, and the property transferred,— is termed *the premises*. The *habendum*, which usually follows, declaring what estate the grantee is to have, is a mere form, which has no efficacy if the premises indicate the estate intended to be vested. The usual covenants as to title are: that the grantor is lawfully seized; that he has good right to convey; that the land is free from incumbrances; that the grantee shall quietly enjoy; and that the grantor will warrant and defend the title against all lawful claims.

Lastly, to make the deed operative, it must be duly executed and delivered; and by the law of some states, attestation by witnesses, acknowledgment by the grantor, or proof by the witnesses, and record, are also essential.

The due execution of a deed requires the signature of the grantor, which may be made by his own hand, or by the hand of another, writing his name in his presence and by his direction, or by the hand of an agent empowered by deed. To the signature, a seal must be affixed in some of the states. In the absence of any regulation to the contrary, the seal must be an impression made upon wax, or a wafer affixed to the paper. In some of the states, however, the word "seal," or a printed or written scroll in imitation of a seal, is sufficient. In others, chiefly western and southern states, the use of the seals is wholly dispensed with. For the requirements of the statutes of the several states, in relation to seals, scrolls, etc., see the chapter on ACKNOWLEDGMENT AND PROOF OF DEEDS.

Where there are several signatures, it is best to affix a seal for each; but one will suffice for all, if the intention to use it so is made apparent.

If actual seals are affixed to the instrument, words in the conclusion indicating that the parties have affixed their seals are not necessary though it is usual always to insert them. In some of the states, the sufficiency of a scroll as a seal depends on whether such words are inserted.

The seals are usually affixed by the conveyancer in preparing the instrument. If the paper is sent away for execution, it is a convenient practice to mark on it, in pencil, the proper places for the respective signatures, and the number of witnesses required.

If the grantor is an illiterate person, or in any case, if he requests it, the deed must be read over to him before its execution; and all blanks should be filled before execution, and any material erasures or interlineations should be noted at the foot, just above the signatures of the attesting witnesses.

After an attestation and acknowledgment as required by law, the parties have not power, even by consent, to make alterations in any material point without attesting and acknowledging anew.

The delivery of a deed is essential to make it operative; and in general a deed

will not take effect, so as to vest the estate or interest intended to be conveyed, except from the time of its delivery. In this respect, the date, which is not in itself an essential part of a deed, is unimportant. Delivery and an acceptance by the grantee are, however, presumed from slight circumstances. A declaration made by the grantor, in the presence of the witnesses, upon executing a deed, that he does deliver it, though he retains possession at the time, will be sufficient to throw the burden of disproving the delivery upon the party disputing it. If the delivery is intended to be conditional, so as not to take effect immediately, it must be made to some other person than the grantee or his agent.

It is the practice of the most careful conveyancers to cause the grantor, on executing the deed, to declare in words, in the presence of the witnesses, that he executes and delivers it as his act and deed. Such a formula, though not essential, is a convenient way of preventing controversy as to the fact of delivery.

Attestation by witnesses is not essential to constitute a deed at common law, and when not required by the terms of a power under which a deed is made, or by statute, a deed is valid without attesting witnesses. Some of the states, however, have adopted the rule that to render a deed valid against others than the grantor and his heirs, it must be attested by one or more witnesses, unless it is acknowledged by the grantor; and as the attestation of witnesses affords such an easy and effectual mode of proof, enabling the grantee to supply the want of a sufficient acknowledgment, and adds greatly to the credit of a deed, prudence requires that every deed be so attested.

Persons who are disinterested and competent should be selected as witnesses. It is generally understood that a subscribing witness is one who was present when the instrument was executed, and who at that time subscribed his name to it as a witness. He need not, however, be present at the moment of the transaction. If he is called in by the parties immediately afterwards, and upon being told by the grantor that it is his act, and requested to subscribe as witness, he then does so, it is a sufficient attestation, the whole being regarded as one transaction.

The witnesses should in general attest the delivery as well as the execution. In some of the states, however, it will be observed that the statute speaks only of attesting the signing and sealing.

Where a deed is delivered in escrow, a written memorandum of the conditions inserted in the witnesses' attestation may be a convenient method of preserving evidence of the fact; but such a memorandum is not essential.

Acknowledgment.—The formalities above stated will, as a general rule, complete the transfer according to the tenor of the instrument, so far as concerns the immediate parties to the instrument and their heirs. But in order to protect fully the rights of others, registry is necessary, and a preliminary condition to the registry of a deed is its due acknowledgment or proof before the proper officer. It is to be added, also, that by the law of some of the states, a deed by a married woman is without any validity until it has been acknowledged by her in person before such officer. The subject of ACKNOWLEDGEMENT AND PROOF OF DEEDS forms a separate chapter, where the rules on this point adopted in the several states are indicated.

It is the duty of the grantor, or person who has contracted to give the deed, to procure the due acknowledgment or proof of its execution, and such incidental certificates as may be necessary to entitle the deed to be put on record at once.

In the following pages are given a copious collection of forms conformable to the methods of conveyancing used in the state of New York and the numerous states in which the same forms are in vogue. These are adapted to a great variety of cases involving peculiar parties, considerations, property, estates, and conditions. These, although more prolix than is agreeable to the practice of some other states, are, in general, valid and sufficient in all the states and territories. With due attention to the directions given for the execution of deeds for particular states, and, in case of statutory conveyances, to the provisions of the acts under which the conveyance is made, these

may be safely used as sufficient, in matter of form, for lands in any jurisdiction within the Union, in the cases to which they are respectively adapted.

Following these is given a very full digest of the real estate of the several states and territories, including, Alaska, the Philippines and Porto Rico. Statutory forms of deeds are given when such forms are provided for in the law. These short forms are not in common use, but longer forms of much the same general type are used in the various states. Such forms are given after the digest of the statutory provisions. In large measure they follow the older and general forms which are given below under subdivisions I, II, III, IV and V.

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I. FORMS GENERALLY APPLICABLE.

These forms, though chiefly based on the former law and practice of the state of New York, are appropriate to the practice in many other states; and are, it is believed, valid and sufficient forms in all of the states for the cases to which they are adapted.

Most of the states in which peculiar forms are in vogue are noticed in alphabetic order above.

775. Formal Indenture.¹

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, and Y. Z., of , in the said county, farmer, parties of the first part and the mayor, aldermen and commonalty of the city of , parties of the second part. WITNESSETH [*here will follow the provisions of the instrument, concluding thus:*]

IN WITNESS WHEREOF, to one part of these presents, remaining with the said parties of the first part, the said parties of the second part have affixed their hands and seals; and to the other part thereof, remaining with the said par-

¹ The distinction between deeds in the form of indenture and those in form of deed-poll, has now no essential legal importance. The practice in some states has adopted one, in some the other form. Technically, an indenture, the form of which is given above, was an instrument executed by two or more parties, containing provisions binding each one to the other: and it was originally deemed essential and that the instrument be written in two copies upon different parts of the same parchment, and then the parts were cut asunder in a waving or notched line. Hence the name "indenture." One copy was sealed by one party, who delivered it to the other party, and received from the latter in turn the other part, with his seal thereon.

In modern conveyancing, indenting is unnecessary; and with us the term indenture

does not imply anything more than that the instrument (being of course under seal) is not a mere grant, but contains matter intended to bind both parties. Indeed, the word is often used in the heading of a mere grant, which formerly would have been called a deed-poll. And where an indenture for the conveyance of land is executed by both parties to it, it is usual to make out one instrument, and to deliver it to the grantee; for the practice of recording deeds leads to dispensing with a counterpart. It is only where two copies are made, one to be signed by each party, and interchangeably delivered, that the above form is used.

Where a deed is thus interchangeably executed, each part is the deed of both. *Dudley v. Sumner*, 5 Mass. 438. (See also witness, claim of, Form —.)

ties of the second part, the said parties of the first part have caused the common seal of the said city of _____ to be affixed the day and year first above written. [Signatures, etc., accordingly.]

Signed, sealed, and delivered in presence of
[Signature of witness.]

776. Deed-Poll.¹

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., OF _____, AND C. D.,
of _____, SEND GREETING:

KNOW YE, that the said A. B. and C. D. [*here will follow the provisions of the instrument, concluding thus:*]

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this
day of _____, 19 ____ . [Signatures and seals of the grantors.]

Signed, sealed, and delivered in the presence of
[Signature of witness.]

777. Short Form of Deed in Fee.²

I, A. B., in consideration of one dollar to me paid by C. D., do bargain and sell [*or, in New York, grant*] to C. D., and his heirs [*in certain states, the words and his heirs may be omitted*]³ the lot of land [*describe it*].

WITNESS my hand and seal, etc.

778. Quitclaim Deed.⁴

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the city of _____, in the county of _____, and state of _____, farmer [*or, we, A. B., of, etc., as above, and C. B., his wife*], in consideration of _____ dollars to me [*or, us*] paid by Y. Z., of _____, merchant, the receipt whereof is hereby acknowledged, have remised, released, and forever quitclaimed, and by these presents do, for myself, my [*or, ourselves, our*] heirs, executors, and administrators, remise, release, and forever quitclaim unto the said Y. Z., his heirs and assigns forever, all such right, title, interest [*dower and right of dower*], property, possession, claim, or demand as I [*or, as we, or either of us*] have or ought to have,

¹ A deed-poll, as a deed by which but one party made a grant or bound himself to the other party, was formerly called, was so designated because the parchment was cut straight at the top instead of being indented as a deed interchangeably executed. The distinction, though anciently insisted on, is no longer of any consequence. The use of printed forms and the practice of recording deeds has resulted in the custom of executing but one instrument, which frequently has the words appropriate to an indenture, without reference to the character of its provisions.

² This form, which is known as Chancellor Kent's deed, is given in his Commentaries (vol. 4, p. 461), as in his opinion perfectly competent, in any part of the United States, to convey the fee. It is further sustained by *Hutchins v. Carleton*, 19 N. H. 487; *Bridge v. Wellington*, 1 Mass. 219; *Fairley v. Fairley*, 34 Miss. (Geo.) 18; *Humphrey v. Foster*, 13 Gratt. 653; *Chiles v. Cowley*, 2 Dana, 21.

³ As to the states in which a deed of lands, without words of inheritance, may transfer the fee, see the names of the states in their order above, pp. 364-397.

⁴ The quitclaim deed is generally used where the grantor desires to incur no responsibility as to the title.

It was formerly the rule, that an instrument by which one merely released or quitclaimed to another could pass nothing unless the latter was actually or constructively in possession; but the generally received American rule is, that the words "remise, release, and quitclaim," or indeed any equivalent words, such as "release and assign," "make over and confirm," and the like, are sufficient to raise a use or trust for the bargainee, and amount to a sufficient conveyance, if there is a pecuniary consideration. *Beddoe v. Wadsworth*, 21 Wend. 120; *Lynch v. Livingston*, 6 N. Y. (2 Seld.) 422; *Pray v. Pierce*, 7 Mass. 381; *Russell v. Coffin*, 8 Pick. 143.

in or to all [*here insert description of premises*], together with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party [*or, parties*] of the first part, of, in and to the above granted premises, and every part and parcel thereof.

TO HAVE AND TO HOLD the said premises unto the said Y. Z., his heirs and assigns, to his and their only proper use and behoof forever; so that neither I, the said A. B., or any other person in my name and behalf [*or, we, the said A. B. and C. B., or either of us, or any other person in our or either of our names and behalf*] shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they, and every of them, shall by these presents be excluded and forever barred.

IN WITNESS WHEREOF, I [*or, we*] have hereunto set my hand and seal [*or, our hands and seals*], this day of , in the year one thousand eight hundred and [*Signatures and seals of grantors.*]

Signed, sealed, and delivered in the presence of
[*Signature of witness.*]

779. Deed Conveying Without Covenants.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , farmer [*and C. B., his wife*], of the first part, and Y. Z., of , in said county, merchant, of the second part:

WITNESSETH: That the said party [*or, parties*] of the first part, in consideration of the sum of dollars, to him [*or, them*] paid by the said party of the second part, the receipt whereof is hereby acknowledged, has [*or, have*] granted, bargained, and sold, and by these presents does [*or, do*] grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description of premises*], together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest [*dower and right of dower*], property, possession, claim, and demand whatsoever, as well in law as in equity of the said party [*or, parties*] of the first part, of, in, and to the above-granted premises, and every part and parcel thereof:

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party [*or, parties*] of the first part has [*or, have*] hereunto set his hand and seal [*or, their hands and seals*] the day and year first above written. [*Signatures and seals.*]

Signed, sealed, and delivered in the presence of
[*Signature of witness.*]

780. Deed with Covenant Against Grantor's Acts.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of the city of , and state of , merchant [*and C. B. his wife*], of the first part, and Y. Z., of , in said county, farmer of the second part, witnesseth: That the said party

[or, parties] of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to him [or, them] in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has [or, have] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs [or, if a corporation, its successors] and assigns forever, all [here insert description of the premises], together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest [dower and right of dower],¹ property, possession, claim, and demand whatsoever, both in law and in equity, of the said party [or, parties] of the first part, of, in, and to the above-granted premises, and every part and parcel thereof, with the appurtenances. To HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns forever.*

AND THE SAID A. B. [not naming the wife], for himself, his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered, in any manner or way whatsoever.

IN WITNESS WHEREOF, the said party [or, parties] of the first part has [or, have] hereunto set his hand and seal [or, their hands and seals], the day and year first above written. [Signatures and seals.]

Signed, sealed, and delivered in presence of

[Signature of witness.]

781. Warranty Deed.²

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of the city of , and state of , merchant [and C. B., his wife], of the first part, and Y. Z., of , in said county, farmer, of the second part, WITNESSETH: That the said party [or, parties] of the first part, in consideration of the sum of dollars, lawful money of the United States, to him [or, them] in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his executors and administrators, forever released and discharged from the same, by these presents, has [or, have] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does [or, do] grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever,

¹ Omit these words, unless a wife joins.

² The warranty in this form is called the general warranty, being against the acts of all persons. A contract to give a warranty deed calls for a general warranty, unless

otherwise expressed; though this rule does not obtain in Pennsylvania, where such a contract is satisfied by a special warranty — *i. e.*, against the vendor's acts. For a form of which, see Form No. 723.

all [*here insert description*], together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest [dower and right of dower]¹ property, possession, claim, and demand whatsoever, both in law and in equity, of the said party [*or, parties*] of the first part, of, in, and to the above-granted premises and every part and parcel thereof, with the appurtenances. To HAVE AND TO HOLD the above-mentioned and described premises, with the appurtenances and every part thereof, to the said party of the second part, his heirs and assigns forever.* And the said A. B. and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party [*or, parties*] of the first part, and his [*or, their*] heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, shall and will warrant and by these presents forever defend.²

IN WITNESS WHEREOF, the said party [*or, parties*] of the first part has [*or, have*] hereunto set his hand and seal [*or, their hands and seals*] the day and year first above written.

[*Signatures and seals.*]

Signed, sealed, and delivered in presence of

[*Signature of witness.*]

782. Special Warranty.³

[*As in the preceding form, or as in Form 721, substituting in place of the paragraph following the *, this clause:*] And the said A. B. and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, or any part thereof, by, from, or under him, them, or any of them, shall and will warrant, and, by these presents, forever defend.

IN WITNESS [*etc., concluding as in preceding form*].

¹ Omit these words, unless a wife joins.

² This is the form of general warranty formerly in use in New York, and it is believed to be the same generally throughout the country. Rawle on C., 240. This covenant is not broken by want of title in the grantor, or an outstanding title in another. Eviction, or a disturbance or surrender of possession, is necessary to constitute a breach. Kent v. Welch, 7 Johns. 258; Miller v. Watson, 5 Cow. 195; Vandekarr v. Vandekarr, 11 Johns. 122; Blydenburgh v. Cotheal, 1 Duer, 176; Mitchell v. Warner, 5 Conn. 497, 510; Loomis v. Bedel, 11 N. H. 74; Hamilton v. Cutts, 4 Mass. 349.

³ It has been held, that where the deed purports to convey "all the right, title, and interest of the grantor," a special warranty, such as the above, is to be deemed to relate

to the title, not to the land itself, and it does not estop the grantor to set up a title subsequently acquired. Comstock v. Smith, 13 Pick. 116. But Loomis v. Bedel, 11 N. H. 74, is to the contrary. Compare Frink v. Darst, 14 Ill. 304; Miller v. Ewing, 6 Cush. 34. It was held in Loomis v. Bedel, 11 N. H. 74, that a covenant to warrant and defend the premises, refers to the lands described, and not merely to "the right, title and interest of the grantor," even where the deed only purports to convey that right. Comstock v. Smith, 13 Pick. 116, holds the contrary where the warranty is special. But such covenant extends only to lands and tenements — that is, to what is permanent and immovable — and does not include water or easements. Mitchel v. Warner, 5 Conn. 497.

783. Warranty Deed, with Full Covenants.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , farmer [and C. B., his wife], party of the first part, and Y. Z., of the same place, merchant, party of the second part, WITNESSETH: That the said party [or, parties] of the first part, for and in consideration of the sum of dollars, lawful money of the United States, to him [or, them] paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same by these presents, has [or, have] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and, by these presents, does [or, do] grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description*]; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest [dower and right of dower],¹ property, possession, claim, and demand whatsoever, both in law and in equity, of the said party [or, parties] of the first part, of, in, and to the above-granted premises, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns forever. [*If there is any incumbrance state it thus*: subject, however, to a certain indenture of mortgage for dollars, and dated , 18 , and recorded in the office of , in liber of Mortgages, at page , and also subject, etc.]

AND THE SAID A. B. [*not naming the wife*], for himself, his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said A. B., at the time of the sealing and delivery of these presents, is lawfully seized in his own right [*or otherwise, as the case may be*], of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted and described premises, with the appurtenances [*if conveyed subject to incumbrance, say, subject as aforesaid*]; and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party [or, parties] of the first part, his [or, their] heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; * and that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, title, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever * [*if conveyed, subject to an incumbrance, say, except as aforesaid*].²

¹ Omit these words, unless a wife joins. \ ' formerly ran in deeds in New York and is still

² The words between the * * constitute used in some other states. This covenant, the covenant against incumbrances, as it however, in its original form, was a clause

And also, that the said party [or, parties] of the first part, and his [or, their] heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the above-granted premises, by, from, under, or in trust for him [or, them], shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or intended so to be in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required. And the said A. B. [*not naming wife*] and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party [or, parties] of the first part and his [or, their] heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and, by these presents, forever defend.

IN WITNESS WHEREOF, the said party [or, parties] of the first part has [or, have] hereunto set his hand and seal [or, their hands and seals], the day and year first above written. [Signatures and seals.]

Signed, sealed, and delivered in presence of

[Signature of witness.]

784. Deed with Covenant by Grantee against Certain Kinds of Building and Occupation, and against Nuisances.¹

[As in other full forms to the habendum, thence as follows:] TO HAVE AND TO HOLD the above-mentioned and described premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, subject, nevertheless, to the covenants, conditions, and restrictions hereinafter expressed. And the said party of the second part, for himself, his heirs and assigns, doth covenant and agree to and with the said A. B., his heirs, executors, administrators, and assigns, as follows — that is to say, that the party of the second part, his heirs or assigns, shall not, at any time hereafter, erect, or cause or procure, permit, or suffer to be erected upon the hereby granted premises, or any part thereof, any building other than a building of brick or stone, with a roof covered with slate, tin, zinc, or other metal; nor at any time hereafter erect, or cause, procure, permit, or suffer to be erected, upon the rear of the lot or lots hereby conveyed, or any of them, any building to be used or occupied, or for the purpose of being used or occupied, as a dwelling-house or habitation; nor at any time hereafter erect, or cause or procure, permit, or suffer to be erected, upon the premises hereby conveyed, or any part thereof, any building to be used or occupied, or for the purpose of being used or occupied, for any of the purposes herein and hereby prohibited; nor at any time use or employ, or cause, procure,

added by way of qualification or enlargement free of all incumbrance. For that form of the covenant for quiet possession, its connection being that the grantee and his heirs, the covenant, see Form 620, *supra*.

etc., should enjoy quiet possession, and that, ¹ For a form of ordinary covenant against nuisances, see chapter on COVENANTS.

permit, or suffer to be used or employed, by his heirs or grantees, lessees or tenants, of said premises, or any part thereof, or by any other person holding possession of said premises, or any part thereof, under his title, any building erected, or which may at any time hereafter be erected, on said premises or any part thereof, for the use or purpose of, or as, a brewery, distillery, slaughter-house, smithshop, carpenter shop, forge or furnace, steam-engine, brass foundry, nail or other iron foundry, soap, candle, starch, varnish, vitriol, glue, ink, turpentine or bone factory, or manufactory of gunpowder, or any bone-boiling establishment, or factory for tanning, dressing, or preparing skins, hides or leather, or cow stable or livery stable, or cattle-yard or hog-pen, or for any other dangerous, noxious, or offensive purpose or establishment whatsoever.

And that the said party of the second part, his heirs and assigns, shall not carry on, prosecute, conduct, use, or employ, or procure, cause, permit, or suffer to be carried on, prosecuted, conducted, used, or employed on said premises, or any part thereof, by his or their grantees, lessees, tenants, or by any person in possession of said premises, or any part thereof, any steam-engine, except for the purposes of heating said premises or running elevators thereon, or any of the said trades, business, machines, or employments above specified, or any other noxious, offensive, or dangerous trade, business, or employment.

And it is expressly understood and agreed, and this conveyance is made and accepted upon the express condition that if said premises, or any part thereof, or any building thereon erected or to be erected, or any part thereof, shall, at any time, be used, or procured, permitted, or suffered to be used by the said party of the second part, his heirs or assigns, or any lessees, tenants, or any persons in possession thereof, under him, them, or either of them, for any of the purposes above prohibited; or if any of the said machines, trades, business, or employments shall be employed, used, carried on, prosecuted, or conducted, or procured, permitted, or suffered to be employed, used, carried on, prosecuted, or conducted upon said premises, or any part thereof; or if said party of the second part, his heirs and assigns, shall neglect, or fail to perform, fulfill, and keep the several covenants herein contained, or make any default in the performance or fulfillment of said covenants, or any or either of them, then and in either of such events it shall be lawful for the said A. B. and his heirs and assigns, and also for the owner or owners of any lot or lots adjoining, or in the neighborhood of the premises hereby conveyed, deriving title from or through the said A. B., and he or they, or any of them, are hereby authorized and empowered to re-enter into and upon said premises, or the particular lot or lots in respect to which such covenant or covenants may have been broken, or neglected or omitted to be performed, fulfilled and kept, and without notice evict all persons therefrom in possession thereof, and to tear down, remove therefrom, and sell such building or buildings so used or to be used or employed for the purposes herein and hereby prohibited or either of them; and also to tear down, remove therefrom, and sell all fixtures, utensils, and appurtenances used or intended to be used for the purpose of carrying on or conducting any or either of said trades, businesses, or employments, such sales to be made in manner and form as sales of personal property, levied on by virtue of an execution; and the proceeds thereof applied in payment of any expenses incurred in such tearing down, removal, and sale, and also in the payment of all damages sustained or occasioned by means of the breach of the

covenant or covenants aforesaid, and the surplus, if any, to be returned to the owner or owners of the particular lot or lots aforesaid. And it is expressly understood and agreed, that the said several covenants on the part of the said party of the second part, above specified, shall attach to and run with the land, and it shall be lawful not only for the said A. B., his heirs and assigns, but also for the owner or owners of any lot or lots adjoining or in the neighborhood of the premises hereby granted, deriving title from or through said A. B., to institute and prosecute and proceeding at law or in equity against the person or persons violating or threatening to violate the same; it being understood, however, that this covenant is not to be enforced personally for damages against the said party of the second part, his heirs or assigns, unless he or they be the owner or owners of the said premises, or of some part thereof, at the time of a violation of the said covenant, or of a threatened or attempted violation thereof; but the said covenant may be proceeded on for an injunction and for a specific execution thereof, against the said party of the second part, his heirs or assigns, and for damages against the party or parties violating the said covenant, his or their heirs, executors, administrators, or assigns.

[Proceed with other covenants, as in other cases.]

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of *[Signatures and seals.]*

[Signature of witness.]

785. Short Form of Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, farmer, in consideration of _____ dollars, to me paid by Y. Z., of _____, in the county of _____, and state of _____, the receipt whereof is acknowledged, do grant, bargain, sell, and confirm unto the said Y. Z., his heirs and assigns forever, all *[here insert description]*, with the appurtenances. And I do, for myself and my heirs, executors, and administrators, covenant with the said Y. Z., his heirs and assigns, that at the time of making this conveyance I am well seized of the premises, as of a good and indefeasible estate in fee simple, and have good right to bargain and sell the same, as aforesaid, and that the same are free from all incumbrances whatsoever; and the above-granted premises, in the quiet and peaceable possession of the said Y. Z., and his heirs and assigns, I will warrant and forever defend.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the _____ day of _____, in the year one thousand nine hundred and _____

Signed, sealed, and delivered in the presence of *[Signature and seal.]*

[Signature of witness.]

786. Attestation of a Deed in Which Erasures or Interlineations Appear.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Sealed and delivered in the presence of } *[Signature and seal.]*
 (the word "five," on the first page,
 was erased, and the words "be the
 same more or less" written over the
 erasure; on the second page, the
 words "or assigns," interlined in
 three places, and the word "forth-
 with" canceled on the third page,
 before execution).
[Signature of witness.]

II. DEEDS BY OR TO PARTICULAR CLASSES OF PARTIES, SUCH AS CORPORATIONS, OFFICERS, TRUSTEES, ETC.

787. Deed by a Corporation.

THIS INDENTURE, made this _____ day of _____, in the year one thousand nine hundred and _____, between the [*here insert the legal title of the corporation*] of _____, party of the first part, and Y. Z., of the same place, party of the second part, WITNESSETH: That the said party of the first part, in consideration of the sum of _____ dollars [*thence proceeding as in other deeds to the covenants, each of which will begin thus*]: And the said party of the first part [*or name the corporation*], for itself and its successors, does covenant [*etc., continuing as in other cases*].

IN WITNESS WHEREOF, the said party of the first part hereunto has caused these presents to be signed in its name by its
[Corporate seal.] president, and its corporate seal to be affixed, attested by its cashier [*or, secretary, or other officer or officers, as the corporation may order, or its by-laws, or the statute require*], the day and year first above written.

Attest: _____ The _____ Company,
Cashier, or Secretary. by _____ *President.*

788. Same; Where all the Directors Sign

[As in the preceding form to the attestation, which will be:]

IN WITNESS WHEREOF, the president, directors, and company of [*naming the corporation*], have hereunto set their corporate
[Corporate seal.] seal by the hands of their president and directors, and the president and directors have hereunto subscribed their names this _____ day of _____, 18 _____ [*or, the day and year first above written*].
[Signature of president.]
[Signatures of directors.]

789. Same; By a Municipal Corporation.

[As in the preceding form to the attestation, which will be:]

IN WITNESS WHEREOF, the said party of the first part has here-
[Corporate seal.] unto caused the common seal of the said city of _____ to be affixed, the day and year first above written.

By the Common Council, _____ *[Signature of mayor.]*
[Signature of clerk.]

790. Deed to a Corporation.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and the [here insert the legal title of the corporation] of , party of the second part, WITNESSETH: That the said party of the first part, in consideration of the sum of dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part and its successors, forever released and discharged from the same, by these presents, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to its successors and assigns forever, all [here insert description, etc., as in other deeds, down to the words to have and to hold, thence continuing thus:]

TO HAVE AND TO HOLD all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, forever. And the said A. B., for himself and his heirs, executors, and administrators, does covenant, promise, and agree to and with the said party of the second part, and its successors and assigns, that [etc., continuing as in other cases, but naming "successors" instead of "heirs, executors," etc., of the party of the second part].

791. Deed Releasing to Heirs or Devisees.

[The habendum may be as follows:] TO HAVE AND TO HOLD the premises hereby granted, with the appurtenances, unto the said parties of the second part, their heirs and assigns, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns forever, according to their respective estates, rights, titles, or interests, as devisees or persons entitled to the real property of the said M. N., deceased.

792. Deed Executed by an Attorney in Fact.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B. [naming the principal], of , merchant, of the first part, and Y. Z. [etc., proceeding as in case of a deed executed by the principal].

IN WITNESS WHEREOF, the said party of the first part [or, name the principal] has hereunto, by C. D., his attorney in fact, set his hand and seal the day and year first above written.

A. B. [SEAL.]

By C. D., his Attorney, or his Attorney in fact.²

¹ It is the general rule, that it is indispensable, to give validity to a deed made by an attorney, that it should be made in the name of the principal. Coombe's Case, 9 Co. 76; Elwell v. Shaw, 16 Mass. 42; Spencer v. Field, 10 Wend. 87. It is not enough that it be in name of the agent describing him as such. This rule, however, is much relaxed in some of the states.

² It is not sufficient to declare in the

frame of the conveyance, that it is the deed of the principal. The name of the principal must be signed. Fowler v. Shearer, 7 Mass. 14; Townsend v. Hubbard, 4 Hill, 351.

This is the appropriate form of signature. But it is not material whether the signature be "A. B. by C. D., his Attorney," or, "C. D. for A. B." Worrall v. Munn, 5 N. Y. (1 Seld.) 229

793. Another Form; Referring to the Power Annexed.

[As in preceding form, concluding thus:]

IN WITNESS WHEREOF, C. D., in pursuance of a letter of attorney, hereunto annexed [or, a copy of which is hereunto annexed], bearing date the day of . 19 , hath set the hand and seal of the said principal A. B., the day and year first above written. A. B. [SEAL.]

Signed, sealed, and delivered in presence of By C. D., his Attorney.

[Signature of witness.]

794. Another Form; Referring to the Power Annexed.

[As in Form No. 733, concluding thus:]

IN WITNESS WHEREOF, the said party of the first part has, on the day and year first above written, caused these presents to be signed in his name, and his seal to be hereunto affixed by C. D., in pursuance of a power of attorney, hereunto annexed [or, a copy of which is hereunto annexed], bearing date the day of , .

795. Deed by Authority of the Legislature.¹

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of the city of , gentleman, of the first part, and Y. Z., of the same place, of the second part;

WHEREAS, the said A. B., by virtue of sundry conveyances, acts of the legislature, and orders of the court of chancery of the state of , has been empowered² to sell, or mortgage, or convey [in satisfaction of any debt due from him to any person or persons], the estate at , devised by C. B., deceased, or any part thereof, for the benefit of the said A. B. and his children; and,

WHEREAS, the said A. B. is indebted to the said party of the second part in a large sum of money:

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said A. B., in consideration of [etc., proceeding as in other cases].

796. Deed by Executors.

THIS INDENTURE, made this day of , one thousand nine hundred and , between A. B., of the city of , in the state of , executor [or, sole acting executor; or, sole surviving executor; or, if there are several, say: A. B., of, etc., and C. D., of, etc., executors] of the last will and testament of M. N., late of , in the county of , and state of , deceased, of the first part, and Y. Z., of , in the county of , farmer, of the second part, WITNESSETH: That the said party [or, parties] of the first part, by virtue of the power and authority to him [or, them] given in and by the said last will and testament, and in consideration of the sum of dollars to him [or, them] paid by the said party of the second part, the re-

¹ Where there is a long-settled usage for persons acting under a power from the government to convey in their own name, such a conveyance is valid unless otherwise directed by the authority under which it is made. *Ward v. Bartholomaw*, 6 Pick. 409; *Cofran v. Cockran*, 5 N. H. 458.

² These recitals are not essential to the validity of the deed, but are a convenient method of preserving evidence; and they may be made more full by citing the particular acts relied on.

ceipt whereof is hereby acknowledged, has [or, have] granted, bargained, sold,* aliened, remised, released, conveyed, and confirmed, and by these presents does [or, do] grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all [*here insert description*], together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party [or, parties] of the first part [or, either of them, have or] has, by virtue of the said last will and testament, or otherwise, of, in, and to the above-granted premises, and every part and parcel thereof, with the appurtenances.

To HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever. *

AND the said party [or, parties] of the first part, for himself, his [or, themselves, their] heirs, executors, and administrators, does [or, do] covenant, promise, and agree, to and with the party of the second part, that he is [or, they are] lawfully the executor [s] of the last will and testament of said M. N., and has [or, have] power to convey as aforesaid, and has [or, have] in all respects acted, in making this conveyance, in pursuance of the authority granted in and by the said last will and testament; and that he has [or, they have] not made, done, or suffered any act, matter, or thing whatsoever, since he was [or, they were] executor as aforesaid, whereby the above-granted premises, or any part thereof, now are, or at any time hereafter shall, or may be impeached, charged, or incumbered in any manner whatsoever.

[If a covenant of seisin is inserted, it will be as in Form 744.]

IN WITNESS WHEREOF, the said party [or, parties] of the first part has [or, have] hereunto set his hand and seal [or, their hands and seals] the day and year first above written. A. B., *Executor, etc.* [SEAL.]

Signed, sealed, and delivered in presence of

[Signature of witness.]

797. Deed by Survivors of the Acting Executors.

THIS INDENTURE, made this day of , in the year 19 , between A. B., of the county of , and C. B., of the county of , as executors, parties of the one part, and Y. Z., of the city of , of the other part:

WHEREAS, M. B., late of , deceased, did, by his last will and testament, give, bequeath, and devise to his executors therein named all of his estate, real and personal, not otherwise devised, upon trust, for the purposes therein expressed, with power unto them, or such of them as might qualify, and the survivors and survivor of them, to sell any part thereof which might be necessary, and to convey the same to the purchaser or purchasers: and the said testator, by his said last will and testament, gave to his said executors discretionary power and authority, in the case of real estate, to sell for cash, or upon such credit as they might deem most advisable, and conducive to the interest of his estate; taking good security from the purchasers, and also a lien on the said real estate, to secure the payment of the purchase money; and

he, the said testator, did, by his said will and testament, constitute and appoint O. P. and his sons, A. B., C. B., and D. B., executors thereof; and,

WHEREAS, the said will (and a codicil thereafter written) were proved and admitted to record in the court of _____, at _____, on the _____ day of _____, 18____, and, on the _____ day of _____, the said A. B., C. B., and D. B., three of the said executors, qualified as such, by performing what was necessary for obtaining a probate of the said will and codicil, and the said O. P. renounced the same; and,

WHEREAS, after undertaking the said executorship, the said D. B. departed this life, and the said A. B. and C. B. survived him, and by virtue of the power vested in them, as surviving executors of said will, they, the said A. B. and C. B., have bargained to sell to the said Y. Z. the lot or piece of ground hereinafter mentioned for the sum of _____ dollars, payable as follows — viz., dollars on the delivery of these presents, and the residue in three equal annual installments, carrying interest from the _____ day of _____, the punctual payment of the last-mentioned three sums of money to be secured by negotiable notes with approved indorsers, and a deed of trust on the property sold:

NOW THIS INDENTURE WITNESSETH: That the said A. B. and C. B., as surviving executors of the last will and testament of the said testator, for and in consideration of the said sum of _____, paid and secured to be paid as aforesaid, and also in consideration of the sum of one dollar, to them in hand paid, have [*etc., as in other forms*].

798. Deed by Executors, Reciting the Power and the Facts on which its Execution Depends.¹

THIS INDENTURE, made this _____ day of _____, one thousand nine hundred and _____, between A. B., of _____, in the county of _____, and state of _____ [and C. D., of, etc.], executor [s] of the last will and testament of M. N., late of _____, aforesaid, deceased, of the first part, and Y. Z., of _____, in the county of _____, farmer, of the second part, WITNESSETH:

WHEREAS, the said M. N., by his said last will and testament, bearing date the _____ day of _____, 19____, devised the lands hereinafter mentioned to his executor [s] aforesaid, in trust, to hold the same during the minority of his son, O. N., and on his attaining majority, or on his death, if it should sooner occur, to sell and convert the same into money for the purposes in said will specified, with power in such case to sell in such manner as they should deem proper; and,

WHEREAS, the said O. N. died, on the _____ day of _____, 19____, before obtaining majority:

NOW THIS INDENTURE WITNESSETH: That the said party [*or, parties*] of the first part, by virtue of the power and authority to him [*or, them*] given in and by the said last will and testament, and in consideration of the sum of _____ dollars to him [*or, them*] paid by the said party of the second part, the receipt whereof is hereby acknowledged, has [*or, have*] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does [*or, do*] grant, bargain, sell, alien, remise, release, convey, and

¹ When a deed is made pursuant to a power, it is usual to recite the facts which must take place in order to a valid execution of the power. This, though not necessary, is advisable, as the recitals may be evidence after lapse of years. *Ward v. Bartholomew*, 6 Pick. 409.

confirm, unto the said party of the second part, his heirs and assigns forever, all [*here insert description*].

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party [*or, parties*] of the first part [*or, either of them, have or*] has by virtue of the said last will and testament, or otherwise, of, in, and to the above-granted premises, and every part and parcel thereof, with the appurtenances:

To HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever.*

[*Continue and conclude as in Form 796, from the *.*]

799. Deed by Several Executors, Covenanting Severally and Each for Himself Alone.

[*As in either preceding form to the *, thence continuing thus:*] And the said parties of the first part, each for himself, his heirs, executors, and administrators, does severally and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only, covenant, promise, and agree to and with the said party of the second part, that he is lawfully the executor of the last will and testament of the said M. N., and has power to convey as aforesaid, and has in all respects acted, in making this conveyance, in pursuance of the authority granted in and by the said last will and testament; and that he has not made, done, or suffered any act, matter, or thing whatsoever, since he was executor as aforesaid, whereby the above-granted premises, or any part thereof, are, shall, or may be impeached, charged, or incumbered in any manner whatsoever.

[*If a covenant of seizin is inserted, it will be as in Form 744.*]

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered

in presence of

[*Signature of witness.*]

A. B., *Executor, etc.* [SEAL.]

C. D., *Executor, etc.* [SEAL.]

800. Deed by Executor or Administrator, Selling by Order of Court for Payment of Debts.

TO ALL TO WHOM THESE PRESENTS SHALL COME: I, A. B., of _____, in the county of _____, in the state of _____, executor of the last will and testament [*or, administrator of the goods, chattels, and credits which were*] of M. N., late of _____, deceased, SEND GREETING:

WHEREAS, by an order of the surrogate of the county of _____, made at a court held at _____, and for the said county of _____, on the _____ day of _____ last past, upon an application duly made, I, the said A. B., was licensed and empowered to sell, and pass deeds to convey the real estate of the said M. N., hereinafter described; and,

WHEREAS, I, the said A. B., having given due public notice of the intended sale, by causing a notice of the time and place thereof to be posted for

weeks at three of the most public places in the town [*or, ward*], where the sale was had, and also to be published for weeks, successively, in the newspaper called the , printed in , agreeably to the order and direction of said court; and having given the bond and taken the oath, by law in such cases required, previous to fixing upon the time and place of sale, did, on the day of instant, pursuant to the license and notice aforesaid, sell by public auction the real estate of the said M. N., hereinafter described, to Y. Z., of , in the county of , for the sum of dollars, he being the highest bidder therefor:

NOW, THEREFORE, KNOW YE, that I, the said A. B., by virtue of the power and authority in me vested, as aforesaid, and in consideration of the aforesaid sum of dollars, to me paid by the said Y. Z., the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said Y. Z., his heirs and assigns forever, all [*here insert description of the premises*].

TO HAVE AND TO HOLD the above-granted premises, to the said Y. Z., his heirs and assigns, to his and their use and behoof forever.

AND I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant with the said Y. Z., his heirs and assigns, that in pursuance of the order aforesaid, I took the oath and gave the bond, by law required, and gave public notice of said sale, as above set forth, and in all things observed the requirements of the law, and of said orders in said sale.

IN WITNESS WHEREOF, I, the said A. B., have hereunto set my hand and seal, this day of , one thousand nine hundred and .

Signed, sealed, and delivered in presence of [*Signature, title, and seal.*]

[*Signature of witness.*]

801. The Same; Setting Forth the Orders at Large.

TO ALL TO WHOM THESE PRESENTS SHALL COME: I, A. B., of , in the county of , in the state of , executor of the last will and testament [*or, administrator of the goods, chattels, and credits which were*] of M. N., late of , deceased, SEND GREETING:

WHEREAS, the surrogate of the county of , at a court held at on the day of , 19 , upon application duly made by , granted an order for the sale of certain real property of the said M. N., which order is as follows [*here set forth at large the original order authorizing the sale*]; and,

WHEREAS, pursuant to law, and to the terms of said order, upon giving the bond and taking the oath, and upon due notice, a sale was made by me by public auction, to the said Y. Z., of the hereinafter-granted premises, being [a part of] the same premises described in said order, for the sum of dollars, he being the highest bidder therefor; and,

WHEREAS, a return was by me duly made to the said surrogate of my proceedings on said order of sale; and upon his examining the same, it appeared to the said surrogate that such sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold [*or, if disproportionate, that a greater sum than above specified cannot be obtained*]; and he thereupon, and on the day of , 19 , made

an order confirming the sale and directing a conveyance [or, conveyances] to be executed, which order is as follows [*here set it forth at large*].

NOW, THEREFORE, KNOW YE, that I, the said A. B., by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of dollars, to me paid by the said Y. Z., the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey, unto the said Y. Z., his heirs and assigns forever, all [*here insert description of the premises*].

TO HAVE AND TO HOLD the above-granted premises, to the said Y. Z., his heirs and assigns, to his and their use and behoof, forever.

AND I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant with the said Y. Z., his heirs and assigns, that in pursuance of the order aforesaid, I took the oath and gave the bond by law required, and gave public notice of said sale, as above set forth, and in all things observed the requirements of the law, and of said order in said sale.

IN WITNESS WHEREOF, I, the said A. B., have hereunto set my hand and seal, this day of , one thousand nine hundred and .

Signed, sealed, and delivered in presence of [*Signature, title, and seal.*]

[*Signature of witness.*]

802. Deed by Executor, Conveying by Order of Court Pursuant to Contract of Testator, Duly Proved and Recorded.¹

THIS INDENTURE, made this day of , between A. B., of , surviving executor of the last will and testament of M. N., late of the same place, deceased, of the one part, and Y. Z., of , merchant, of the second part;

WHEREAS, the said M. N., by force and virtue of divers good conveyances and assurances, in the law duly had and executed, became in his lifetime lawfully seized in his demesne as of fee, of and in a certain [*here describe the premises*], with the appurtenances; and being so thereof seized, did, on or about the year , enter into a contract with a certain J. K., for the sale of a certain tract of land [part of the premises aforesaid] containing by computation about acres, be the same more or less, bounded [*etc., describing it as in the agreement*], for the sum of dollars per acre; part whereof, to wit: dollars were paid by the said J. K. to the said M. N., in his lifetime, etc. And the said Y. Z. doth allege, that by divers mesne conveyances and assurances in the law, the right and interest of the said J. K., of, in, and to the aforesaid tract of land, is now vested in him, the said Y. Z., subject to the payment of the residue of the purchase money aforesaid, with interest; and,

WHEREAS, the said M. N. did not comply with the said contract in his lifetime, nor was there any sufficient provision made by him for the performance thereof; and,

WHEREAS, agreeably to the provisions and directions contained in the act of general assembly of this commonwealth, passed the day of A. D. , entitled , the said Y. Z. did, on the day of cause and procure the said recited contract to be duly proved in the court of common pleas of the said county of , which proof was adjudged by

¹ This form is from Grayd. Forms (Penn.), 4th ed., 238.

the said court to be sufficient; and _____, Esq., prothonotary of the same court, on the same day and year, did annex the same to the said contract, and did certify the same under his hand and seal of the said court; and thereupon the same was, on the _____ day of _____ last past, recorded in the office for recording of deeds of the said county of _____, in book _____, page _____; and,

WHEREAS, the said A. B., as executor aforesaid, preferred his petition to the said court, praying leave to make and execute a deed of conveyance to the said Y. Z. and his heirs, for the said tract of land (which by a survey thereof lately made has been found to contain _____ acres, and is butted, bounded, and described as hereinafter mentioned), with the appurtenances, according to the true intent and meaning of the said contract; whereupon the said court, on the _____ day of _____ last past, having considered the prayer of the said petition, and the evidence of the contract aforesaid,

ORDERED AND DECREED, that the said A. B., as executor aforesaid, should make and execute a deed to the said Y. Z. and his heirs, of the hereinafter described tract of land, agreeably to the terms of the said contract, as by the records of the said court, reference being thereunto had, more fully and at large appears.

NOW THIS INDENTURE WITNESSETH: That the said A. B., for and in consideration of the sum of _____ (being the balance of the purchase money and interest thereon), unto him in hand well and truly paid by the said Y. Z., at and before the enscaling and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, and confirmed, and by these presents by virtue and in pursuance of the said decree, does grant, bargain, sell, alien, release, and confirm unto the said Y. Z., and to his heirs and assigns, all that aforesaid tract or piece of land, bounded and described as follows, to wit: Beginning _____, etc. Together [*etc.*, as in other deeds of conveyance without warranty].

803. Deed by an Administrator, Conveying by Order of Court, Pursuant to Contract of his Intestate.

THIS INDENTURE, made this _____ day of _____, in the year of our Lord, one thousand eight hundred and _____, between [name and residence of administrator], administrator of _____, late of the _____ of _____, deceased, party of the first part, and [name, etc., of grantee], of _____, party of the second part.

WHEREAS, the said M. N., before his death, and on or about the _____ day of _____, 19 _____, by a contract bearing date on that day, agreed to and with Y. Z., of _____, in the county and state of _____, farmer, to sell and convey unto him, his heirs and assigns forever, the premises hereinafter described, in consideration of the payment by said Y. Z. of the sum of _____ dollars, but said M. N. died intestate without performing said agreement; and,

WHEREAS, the justices of the _____ court, at their term holden at _____ on the _____ day of _____, did empower and license me to make and execute good and sufficient deed or deeds, to convey the said real estate of the said intestate.

NOW KNOW YE, that by virtue of the authority and license aforesaid, and in order to fulfil and perform all things in the above-mentioned contract or agreement, on the part of the said A. B. to be performed, and in consideration

of the said sum of _____, to me paid by the said Y. Z., the receipt whereof is hereby acknowledged, and in consideration that the said Y. Z. has performed and fulfilled all things in the above-recited contract or agreement on his part to be performed and fulfilled, I, the said A. B., administrator as aforesaid, do hereby grant, bargain, and sell to the said Y. Z., his heirs and assigns forever, the said, etc., with the appurtenances;

To HAVE AND TO HOLD the same to the said Y. Z., his heirs and assigns, to his and their use, forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, 19 _____.

Signed, sealed, and delivered _____ A. B., *Administrator, etc.* [SEAL.]
in presence of _____

[*Signatures of witnesses.*]

804. Deed by Administrators, for Purpose of Partition, after Valuation and Refusal by the Heirs.

THIS INDENTURE, made this _____ day of _____, one thousand nine hundred and _____, between A. B., of _____, and C. D., of _____, in the county of _____, and state of _____, administrators of the goods and chattels, rights, and credits, which were of M. N., late of _____, merchant, deceased, of the first part, and Y. Z., of _____, in said county, of the second part:

WHEREAS, the said M. N., in his lifetime, and at the time of his death, was lawfully seized in his demesne as of fee, of and in the premises hereinafter described; and,

WHEREAS, at an orphans' court, held at _____, in and for the county of _____ aforesaid, on the _____ day of _____ last, upon the petition of N. N., eldest son and heir-at-law [*or otherwise, as the case may be*] of the said M. N., deceased, praying the court to award an inquest to make partition of the real estate of the said intestate, in the said petition mentioned, to and among his children and representatives, in such manner, and in such proportions, as by the laws of _____ is directed and appointed, if such partition could be made without prejudice to or spoiling the whole, otherwise to value and appraise the same, the said inquest was awarded by the court according to the prayer of the said petitioner; whereupon a writ of partition or valuation issued out of the said court, bearing date the _____ day of _____, to the sheriff of the said county directed, commanding him to summon an inquest to make partition of the said real estate to and among the children and representatives of the said intestate, according to law, if such partition could be thereof made without prejudice to and spoiling the whole; but if such partition could not be thereof made as aforesaid, then to value and appraise the same; and that the partition or valuation so made he should distinctly and openly have before the justices of the said court at _____, on the _____ day of _____ then next; at which day, before the judges aforesaid, the sheriff of the said county, to wit, O. P., made return of the said writ, with a schedule hereunto annexed, by which schedule or inquisition, under the hand and seal as well of the said sheriff as of the inquest therein named, it appears, by the oaths and affirmations of the said inquest, that the real estate in the said writ mentioned could not be parted and divided to and among the parties therein

named without prejudice to or spoiling the whole thereof; and, therefore, the inquest aforesaid, upon their oaths and affirmations aforesaid, had valued and appraised the same at the sum of dollars, which return and valuation were, on motion, confirmed by the court; and,

WHEREAS, all the heirs and legal representatives of the said M. N. have severally and respectively refused to take the said premises at the valuation aforesaid, and the said court, upon the application of the said N. N. [*or otherwise, as the case may be*], did grant a rule upon all the heirs and representatives of the said intestate, to show cause at the orphans' court to be held at , on the day of then next ensuing, why the said real estate should not be sold according to the statutes in such case made and provided, at which said time and place, legal notice of the aforesaid rule being proved to have been duly given to all the heirs and legal representatives of the said intestate, and no cause having been shown why the said real estate should not be sold as aforesaid, the said court did then and there order the said A. B. and C. D., administrators as aforesaid, to expose the premises aforesaid to public sale at , on the day of then next ensuing, upon the terms in the said order directed; in pursuance whereof the said administrators, having first given sufficient security according to law for the faithful performance of the trust committed to them; and after having given due public and timely notice of the time and place of sale, did on the day and at the place and time herein mentioned, expose the premises aforesaid to sale by public vendue, and sold the same to the said party of the second part for the sum of dollars, he being the highest bidder, and that the best price bidden for the same; which sale, on report thereof, made to the judges of the said court, was, on the day of following, by them confirmed; and it was considered and adjudged by the said court that the said premises, with the appurtenances, so sold as aforesaid, should be transferred and vested in the said Y. Z. as fully as the said M. N. held the same at his decease, subject and liable to the payment of the purchase money, according to the terms prescribed in the said order, as by the records and proceedings of the same court, remaining at aforesaid, relation thereunto being had, will more fully appear.

NOW THIS INDENTURE WITNESSETH: That the said A. B. and C. D., administrators as aforesaid, for and in consideration of the said sum of dollars, to them in hand paid by the said Y. Z., at and before the sealing and delivery hereof, the receipt whereof they do hereby acknowledge, and thereof acquit and forever discharge the said Y. Z., his heirs, executors, and administrators, by these presents, have granted, bargained, sold, aliened, released, and confirmed, and by these presents, in pursuance and by virtue of the said order of the court, do grant, bargain, sell, alien, release, and confirm unto the said Y. Z., and to his heirs and assigns, all the said premises — to wit [*here insert description of the premises*], together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever of the said M. N., at and immediately before the time of his decease, of, in, to, or out of the same, in law or equity, or otherwise howsoever;

TO HAVE AND TO HOLD the said message or tenement and tract of land, and the tenements, hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said Y. Z., his heirs and assigns, to the only proper use and behoof of the said Y. Z., his heirs and assigns, forever.

And the said A. B. and C. D., administrators as aforesaid, do severally, but not jointly, or the one for the other, or for the act or deed of the other, but each for his own act only, covenant, promise, and agree, to and with the said Y. Z., his heirs and assigns, by these presents, that they, the said A. B. and C. D., have not, nor hath either of them, done, committed, or wittingly or willingly suffered to be done or committed, any act, matter, or thing whatsoever whereby the premises aforesaid, or any part thereof, is, are, or shall, or may be impeached, charged, or incumbered in title, charge, or estate, or otherwise however.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

[Signatures, titles, and seals.]

Signed, sealed, and delivered in presence of

[Signature of witness.]

805. Deed of Guardian, Conveying Infant's Estate, by Leave of Court.

THIS INDENTURE, made the day of , in the year of our Lord, nineteen hundred and , between , infant, of the age of , by , special guardian, party of the first part, and , party of the second part, WITNESSETH [then insert recitals as to appointment, etc., and continue as follows]:

NOW KNOW YE, that I, , of , gentleman, as guardian of C. D., minor, under the age of twenty-one years, by virtue of the power and authority granted me in my said capacity, by the supreme judicial court, holden at , on , in consideration of the sum of dollars, to me paid by , of , the receipt whereof I do hereby acknowledge, being the highest sum bid for the premises hereinafter described, at a public vendue legally had and notified, do grant, bargain, sell, and convey unto the said , his heirs and assigns, a certain message [here insert description], and all the privileges and appurtenances to the same in anywise appertaining and belonging:

TO HAVE AND TO HOLD the granted premises, to him, the said , his heirs and assigns, to his and their use and behoof forever. And I, the said , for myself, my executors, and administrators, do covenant with the said , his heirs and assigns [that the said minors, at the time of executing this deed, are seized in fee of the granted premises]; that in making the said sale I have in all things observed the rules and directions of the law [and that I will, and my heirs shall, warrant and defend the granted premises to the said against the lawful claims and demands of the said minors and their heirs, and all persons claiming the same by, from or under them, or either of them].

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, this day of , one thousand nine hundred and .

Signed, sealed, and delivered

[Signature, title, and seal.]

in presence of

[Signature of witness.]

806. Deed of Infant, Conveying by Special Guardian, by Leave of Court.

THIS INDENTURE, made the day of , in the year 19 , between A. B., of , in the county of , and state of , an infant under twenty-one years of age, by C. D., his special guardian, of , in aforesaid, farmer, of the first part, and Y. Z., of , the second part, WITNESSETH:

WHEREAS, the above-named infant, by E. F., his next friend [or, guardian], heretofore presented to the court a petition praying for a sale of the right, title, and interest of the said infant in the premises in said petition mentioned and hereinafter described; upon which petition, an order of the said court was made at the City Hall in the city of , and county of , bearing date the day of , appointing C. D., above named, the special guardian of such infant, for the purposes of the said application, and directing that it be referred to G. H., a referee, to ascertain the truth of the facts in such petition alleged; and thereupon, after the said special guardian had given the security by law required, such proceedings were afterwards had, that by an order of the said court, made at the said City Hall, at aforesaid, bearing date the day of , in the year , it was, among other things, in substance, ordered, that the above-named C. D., as special guardian of such infant, be authorized to contract for the sale and conveyance of the right, title, and interest of the said infant, in such real estate, for a sum not less than that specified in the referee's report in said order mentioned; and that such sale, with the name of the purchaser and the terms thereof, be reported to the said court, before the conveyance of such premises should be executed; and,

WHEREAS, the said special guardian, upon terms approved by the said referee, contracted for the sale of the said premises with Y. Z., for the sum of dollars, that being the highest sum offered for the same; and thereupon the said guardian made his report, on oath, of such agreement to said court, pursuant to the last recited order, upon which an order was made by said court at the City Hall, in said city, bearing date the day of , 18 , confirming said report, approving and confirming said sale, and directing the same to be carried into effect, and ordering the said guardian to execute, acknowledge, and deliver a deed of said premises to said party of the second part, on his complying with the terms on which, by said agreement, the same was to be delivered; and,

WHEREAS, the said party of the second part has complied with the said terms:

NOW, THIS INDENTURE WITNESSETH: That the said party of the first part, by C. D., his special guardian, in consideration of the sum of dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description of premises*], TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the above-granted premises, and every part and parcel thereof.

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns, forever.

[*Covenant as to regularity of proceedings, if inserted, may be similar to that in Form 800*]

IN WITNESS WHEREOF, the said party of the first part, by his guardian aforesaid, has hereunto set his hand and seal, the day and year first above written.

A. B. [SEAL.]

Signed, sealed, and delivered
in presence of

By C. D., *his Special Guardian.*

[*Signature of witness.*]

807. Deed by Committee of Idiot, Lunatic, or Habitual Drunkard.

THIS INDENTURE, made this day of , 19 , between A. B., of , in the county of , and state of , committee of the person and estate of M. N., an idiot [*or, a lunatic; or, an habitual drunkard*], of the first part, and Y. Z., of , aforesaid, of the second part.

WHEREAS, upon an application duly made, the court of , at , on the day of , 19 , by an order bearing date on that day, directed the real estate of said M. N., hereinafter described [*or, so much of the real estate of said M. N. as might be necessary to raise the sum of* dollars], to be sold by the said A. B., at public or private sale, subject to the approbation of the court, as by the terms of said order will more fully appear; and,

WHEREAS, pursuant to law, and to the terms of said order [after giving the additional security required by said order], and upon due notice, a sale was made by said A. B., by public auction, to the said party of the second part, of the hereinafter granted premises, being [a part of] the real estate aforesaid of said M. N., for the sum of dollars, said party of the second part being the highest bidder therefor [*or, state sale by private agreement, as in Form 746*]; and thereupon the said A. B., on oath, made his report of such agreement to this court, pursuant to the last recited order, upon which an order was made by said court, at the City Hall, in said city, bearing date the day of , 19 , confirming said report, approving and confirming said sale, and directing the same to be carried into effect, and ordering the said committee to execute, acknowledge, and deliver a deed of said premises to said party of the second part, on his complying with the terms on which, by said agreement, the same was to be delivered; and,

WHEREAS, the said party of the second part has complied with the said terms:

NOW, THEREFORE, BY VIRTUE OF THE POWER AND AUTHORITY CONFERRED, THIS INDENTURE WITNESSETH: That the said party of the first part, committee as aforesaid, in consideration of the sum of dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description of premises*], TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title,

interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, and of the said M. N., of, in, and to the above-granted premises, and every part and parcel thereof.

To HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever.

[Covenant as to regularity of proceedings, if inserted, may be similar to that in Form 800.]

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered in presence of *[Signature, title, and seal.]*

[Signature of witness.]

808. Same; Another Form.

THIS INDENTURE, made this day of , 19 , between A. B., of , in the county of , and state of , committee of the person and estate of M. N., an idiot [*or, lunatic; or, habitual drunkard*], of the first part, and Y. Z., of , aforesaid, of the second part, WITNESSETH:

WHEREAS, by an order of the court of , made on the day of , 19 , reciting that it appeared to the said court, that the personal estate of the said M. N. is insufficient for the payment of his debts [*or give any other grounds of the application*], and that the sale of a portion of the real estate of said idiot [*or, lunatic, or, habitual drunkard*], is necessary for the payment thereof, and said A. B., as such committee, was, among other things, authorized, empowered, and directed to sell at public or private sale, subject to the approbation of the court, the premises hereinafter described, for the purpose of paying or discharging the debts of the said idiot, and to report the terms of sale or sales made by him on oath before any contract or deed should be executed; and,

WHEREAS, the said A. B., as such committee, having in pursuance of said order, on the day of , 18 , made his report to the court on oath, stating that he had entered into an agreement, subject to the approbation of the court, with Y. Z., aforesaid, for the sale to him of the premises hereinafter described, for the sum of dollars, to be paid on the delivery of the deed therefor; and,

WHEREAS, by an order of the said court, made on the day of , one thousand nine hundred and , it was ordered that the said report and the said agreement be ratified and confirmed, and said committee should execute, acknowledge, and deliver to the said Y. Z., a good and sufficient conveyance of the tract of land so purchased by him, upon receiving the purchase money agreed to be paid therefor.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said party of the first part, committee as aforesaid, by virtue of the power and authority conferred upon him by the several orders above mentioned, and in pursuance of the statute in such case made and provided, and in consideration of the sum of dollars, the said purchase money, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and conveyed, and by these presents does grant, bargain, sell, remise, release, and convey unto the said

party of the second part, his heirs and assigns forever, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, and of the said M. N., of, in, and to that certain, etc. [*insert description of property.*]

TO HAVE AND TO HOLD the said premises, and every part and parcel thereof, with the appurtenances, to the said Y. Z., his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

Sealed and delivered in the presence of A. B., *Committee.* [SEAL.]

809. Deed by Trustees or Assignees of an Insolvent or Bankrupt or an Absconding Debtor.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between A. B., C. D., and E. F., assignees [*or, trustees*], of the estate of M. N., a bankrupt [*or, an insolvent debtor*] [*or, of the estate of M. N., late of , an absconding debtor*], of , party of the first part, and , party of the second part, WITNESSETH, that,

WHEREAS [*here recite the essential proceedings¹ and the sale made pursuant thereto, and conclude.*]

NOW, THEREFORE, KNOW YE, that we, the said A. B., C. D., and E. F., by virtue of the power and authority in us vested, as aforesaid, and in consideration of the aforesaid sum of dollars, to us paid by the said Y. Z., the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said Y. Z., his heirs and assigns forever, all the interest which the said M. N. had, on the day of , 19 [*naming the day on which the debtor's title was divested by the proceedings*], in and to all [*here insert description of the premises*], TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any-wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

TO HAVE AND TO HOLD the said above-bargained premises, with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns, to his and their own proper use and behoof forever: as fully and absolutely as the said parties of the first part can and ought to do, pursuant to the statute and their authority, as aforesaid.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of [*Signatures, titles and seals.*]
[*Signature of witness.*]

810. Same; Another Form.

THIS INDENTURE, made this day of , in the year , between A. B., trustee [*or, assignee*] of the estate of M. N., of , a bankrupt [*or, insolvent debtor*], party of the first part, and C. D. of , aforesaid, party of the second part.

WHEREAS, the said M. N., being lawfully seized in his demesne, as a fee, among other things, of and in certain land, piece, or parcel of ground situated in , known and described as follows, to wit [*here insert description of premises*]; and,

WHEREAS, the said M. N. did, by a certain deed of assignment, bearing date

¹ This may be done by setting forth the orders, etc., at large, or by stating their substance.

the day of , 19 , grant, bargain, sell, alien, demise, release, convey, assign, transfer, and set over the above-described lot, piece, or parcel of ground unto the said party of the first part, his successors, executors, administrators, and assigns, forever, in trust nevertheless to and for the uses, intents, and purposes in said deed of assignment mentioned and set forth, as by reference thereto, will more fully and at large appear; which said deed of assignment is recorded in liber , page , of deeds in the office of the .

NOW THIS INDENTURE WITNESSETH: That the said A. B., assignee of said M. N., by virtue of the power and authority in him vested, as aforesaid, and in consideration of the sum of dollars, to him paid by the said C. D., the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents does grant, bargain, sell, alien, release, and confirm unto the said party of the second part, and his heirs and assigns forever, all the above-mentioned and described lot, piece, or parcel of ground, together with all and singular the rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, that he, the said M. N., had and held at or immediately before the execution and delivery of the said deed of assignment to said party of the first part, and also the right, title, interest, property, claim, and demand whatsoever, that the said party of the first part acquired in, under, and by virtue of the said deed of assignment by said assignor, to him, the said party of the first part.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances and franchises thereunto belonging, or in anywise appertaining, and of the first part, either in law or in equity, to the said party of the second part, his heir and assigns, to his and their own proper use, benefit, and behoof forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed, and delivered

[Signature, title, and seal.]

in presence of

811. Deed by Master in Chancery.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., one of the masters in chancery in and for the state of , dwelling in the city of , party of the first part, and Y. Z., of the same place, stone-cutter, of the second part,

WHEREAS, at a court of chancery held at the city of , before the vice-chancellor of the first circuit of the state of , on the day of , one thousand eight hundred and , it was, among other things, ordered, adjudged, and decreed by the said court, in a certain cause then pending in the said court between M. N., complainant, and O. P., defendant, * that all and singular the mortgaged premises mentioned in the bill of complaint in said cause, and in said decree described, or so much thereof as might be sufficient to raise the amount due to the complainant for principal, interest, and costs in said cause, and which might be sold separately without material injury to the parties interested, be sold at public auction, according to the course and practice of this court, by or under the direction of one of the masters thereof residing in the city of ; that the said sale be made in the

county where the said mortgaged premises, or the greater part thereof, are situated; that the master give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said cause might become a purchaser or purchasers on such sale; that the said master execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be so sold, a good and sufficient deed or deeds of conveyance for the same; and,

WHEREAS, a certificate of the enrollment of said decree, signed by the clerk of said court, has been presented to the said master in chancery, the party of the first part; and,

WHEREAS, he, in pursuance of the order and decree of the said court, did, on the day of , 19 , sell by public auction, at the Merchants' Exchange, in the city of [part of] the premises in the said order mentioned, due notice of the time and place of such sale being first given, agreeably to the said order, at which sale the premises hereinafter described were struck off to said party of the second part, for the sum of dollars, that being the highest sum bid for the same:†

NOW, THIS INDENTURE WITNESSETH: That the said master in chancery, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and decree of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid, being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all those two certain lots, pieces, or parcels of land, being [part of] the said mortgaged premises, situate, lying and being in the sixteenth ward of the city of [etc., inserting description],

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining:

TO HAVE AND TO HOLD all and singular the above-granted premises, with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said A. B., master in chancery, as aforesaid, hath hereto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered in presence of

A. B., [SEAL.]

[Signature of witness.]

Master in Chancery.

812. Sheriff's Deed after Sale on Execution.

(As to provisions in New York state, see Code Civ. Pro., §§ 1471-1474.)

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., sheriff [or, late sheriff] of the county of , of the first part, and Y. Z., of the city of , party of the second part.

WHEREAS, by virtue of a certain writ of execution issued out of the court of , in and for the county of , in favor of M. N., plaintiff, against O. P., defendant, to the said sheriff directed and delivered, commanding him that out of the personal property of the said O. P., judgment debtor, within his county, he should satisfy the judgment; or if sufficient

personal property could not be found in said county, that then he should cause the amount of such judgment to be made out of the real property in his county belonging to such judgment debtor on the day when the said judgment was docketed in his county, or at any time thereafter, as by reference to the said execution now of record in the said court will more fully appear; and,

WHEREAS, because sufficient personal property of the said judgment debtor, in the said execution mentioned, could not be found in said county, whereof he, the said sheriff, could cause to be made the money specified in the said execution, he, the said sheriff, did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of the said judgment debtor, of, in, and to the real property hereinafter particularly set forth and described, with the appurtenances; and did, on the day of , in the year one thousand nine hundred and , sell the said premises by public auction, at [*designating the salesroom*], in the city of , in said county, he having first given due notice of the time and place of such sale by advertising the same according to law; at which sale the said premises were struck off and sold to Y. Z. * for the sum of dollars, he, the said Y. Z., * being the highest bidder, and that being the highest sum bidden for the same; whereupon the said sheriff, after receiving from the said purchaser the said sum of money so bidden as aforesaid, gave to him such certificate as is by law directed to be given, and a certificate of such sale was duly filed in the office of the clerk of the county of ; § and,

WHEREAS, the fifteen months after such sale, and the giving of such certificate thereof, have expired without any redemption of the said premises having been made:†

NOW, THIS INDENTURE WITNESSETH: That the said party of the first part, sheriff [or, late sheriff] as aforesaid, by virtue of the said execution, and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned, to him in hand paid as aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, assigned, conveyed, and confirmed, and by these presents does grant, bargain, sell, release, assign, convey, and confirm unto the said Y. Z., his heirs or assigns, all the estate, right, title, and interest of the said O. P., the judgment debtor aforesaid, whereof he was seized or possessed on the day of , one thousand nine hundred and , or at any time afterwards, of, in, and to all [*here insert description of the premises*]:

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining:

TO HAVE AND TO HOLD the said above-mentioned and described premises, with the appurtenances, unto the said Y. Z., his heirs and assigns forever, as fully and absolutely as he, A. B., the said party of the first part, [late] sheriff aforesaid, can, may, or ought to, by virtue of the said execution, and of the statute in such case made and provided, grant, bargain, sell, release, assign, convey, and confirm the same.

IN WITNESS WHEREOF, the said [late] sheriff has hereunto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered

A. B.,

[SEAL.]

in presence of

[Late] Sheriff of the County of .

[Signature of witness.]

813. Same; Conveying to an Assignee of the Purchaser.

[As in the preceding form, substituting the name of the original purchaser in place of that of the party of the first part at the * *, and inserting the following words at the †]; and,

WHEREAS, the said certificate of sale has been duly assigned by the said [naming purchaser], to the said party of the second part hereto, with directions to the said party of the first part to execute the deed to him, the said party of the second part hereto.

814. Same; to Redeeming Creditor.

[As in Form 812, substituting the name of the original purchaser for that of the party of the first part at the * *, and inserting the following in place of the words between the § and the †]; and,

WHEREAS, the said premises were not, within one year, redeemed by any person entitled to make such redemption within that time, according to the statute in such case made; and,

WHEREAS, Y. Z., a creditor of the said M. N., having, in his own name [or, as assignee, representative, trustee, or otherwise], a judgment in the court of _____, of the state of _____, against the said M. N., for the sum of _____

dollars, rendered before the expiration of fifteen months from the time of such sale, and which is a lien and charge on the premises so sold, presented to the officer making said sale, within three months after the expiration of the year from the time of said sale, a copy of the docket of the said judgment, duly certified by the clerk of the said court, together with an affidavit, by the said Y. Z., of the true sum due on the said judgment at the time of claiming his right to purchase, and then paid the said officer the said sum of _____ dollars, being the purchase money at said sale, together with interest thereon, at the rate of _____ per cent. per annum from the time of such sale, and has thereby acquired all the rights of the said [naming the original purchaser], to said premises, within the time, and in the manner and form prescribed by the statute in such case made and provided; and no other creditor of the said M. N. has acquired the said rights from or against the said [naming original purchaser]. Now, etc.

815. Deed by Sheriff or Referee, on Sale in Foreclosure.

(For the New York provisions as to such deed, see Code Civ. Pro., § 1632.)

THIS INDENTURE, made the _____ day of _____, 19____, between A. B., sheriff of the county of _____ [or, A. B., a referee appointed by the _____ court, of the state of _____, dwelling in _____], of the first part, and Y. Z., of the city of _____, in the county of _____, in the state of _____, of the second part:

WHEREAS, at a [special] term of the _____ court, of the state of _____, held at the City Hall, in the city of _____, on the _____ day of _____, 18____, before Honorable J. K., one of the justices of said court, in an action then pending in the said court, between M. N., plaintiff, and O. P. and Q. R.. defendants, it was, among other things, ordered adjudged, and decreed, by

the said court * [*here recite the substance of the decree and the making of sale, which will commonly be somewhat as follows*], that all and singular the mortgaged premises mentioned in the complaint in said cause, and in said decree described, or so much thereof as might be sufficient to raise the amount due to the complainant, for principal, interest, and costs in said cause, and which might be sold separately, without material injury to the parties interested, be sold at public auction, according to the course and practice of this court, and under the direction of the said sheriff [or, referee], party hereto of the first part; that the said sale be made on the day of , then next, at o'clock in the noon of that day, at , in the town of , in the county of , aforesaid; that the said sheriff [or, referee] give [weeks] public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said cause might become a purchaser, or purchasers, on such sale; that the said sheriff [or, referee] execute to the purchaser, or purchasers, of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed, or deeds, of conveyance, for the same; and,

WHEREAS, the said sheriff [or, referee], in pursuance of the order and decree of the said court, did, on the said day of , A. D. , sell by public auction, at in the town of , aforesaid, the premises in the said order mentioned, due notice of the time and place of such sale being first given, agreeably to the said order; at which sale, the premises herein-after described were struck off to the said party of the second part, for the sum of dollars, that being the highest sum bid for the same:

NOW THIS INDENTURE WITNESSETH:† That the said sheriff [or, referee], in order to carry into effect the sale so made by him, as aforesaid, in pursuance of the said order and decree of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden, as aforesaid, having been first duly paid to him by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns forever, all [*here insert description of premises*]: TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining:

TO HAVE AND TO HOLD all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit, and behoof forever.

IN WITNESS WHEREOF, the said sheriff [or, referee] the party hereto of the first part, has hereunto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered
in the presence of
[Signature of witness.]

A. B., [SEAL.]
Shriff of county [or Referee].

816. Deed by Sheriff or Referee, on Sale in Partition.

(For New York provisions, see Code Civ. Pro., §§ 1574-1577.)

[As in the preceding form to the *, and then recite the substance of the decree, which will commonly be somewhat as follows:] that all and singular the premises described in the complaint in said action, or so much thereof as are hereinafter particularly described, be sold by or under the direction of A. B., sheriff [or, A. B., a referee appointed by said court], by public auction, in the county where said premises are situated; that the said sheriff [or, referee] do sell, in such separate parcels as he shall deem most for the benefit of the said parties, according to the rules and practice of the said court, and according to the statute in such case made and provided; that he first give weeks previous notice of the time and place of such sale, in one of the public newspapers published in the said county of , and in such other manner as required by law; that after such sale he make report thereof to the said court; and after such report of sale shall have been duly confirmed, he execute and deliver deeds of conveyance for the said premises, in fee simple, to the purchaser thereof at the said sale; and,

WHEREAS, the party hereto of the first part, the said sheriff [or, referee], in pursuance of said order and decree, and having given due notice of the time and place of sale, agreeably to the said order and decree, did, on the day of , 18 , sell by public auction, at , in the town of aforesaid, the premises in the said decree mentioned; at which sale, the premises hereinafter described were struck off and sold to the said party of the second part, for the sum of dollars, that being the highest sum bidden for the same; and such sale having been reported by the said party of the first part to the said court, and duly confirmed:

NOW THIS INDENTURE WITNESSETH [continuing as in preceding form from the † to the end].

817. Deed by Commissioners, on Sale in Partition.

THIS INDENTURE, made this day of , one thousand nine hundred and , between A. B., of , in the county of , and state of , C. D., of the same place, and E. F., of , in said county, of the first part, and Y. Z., of aforesaid, of the second part.

WHEREAS, in proceedings duly taken and had in the court of , by and between M. N., O. P., and Q. R., for the partition and division of certain premises mentioned in the petition in said proceedings, according to the respective rights of the parties interested therein, or for a sale of such premises, if it should appear that a partition thereof could not be made without great prejudice to the owners, pursuant to the statute [relating to the partition of lands owned by several persons], it was by the said court ordered, adjudged, and decreed, by an order made on the day of , at , that a sale of the said premises should be made in order to a division of the proceeds, according to the several rights and interests of the said parties; and thereupon, to make such partition, the parties of the first part to these presents being qualified, were, by the said court, appointed commissioners; and,

WHEREAS, such proceedings were afterwards had in the said court upon the said petition, that the said commissioners so appointed, as aforesaid, were, by a rule of said court, ordered and directed to sell the said premises, with the appurtenances, at public auction, to the highest bidder; giving notice,

according to law, of the time and place of such sale; and that they should make report thereof to the said court; and,

WHEREAS, the said commissioners, pursuant to the said order and direction, after giving public notice of the time and place of such sale, did, on the day of , at , in the town of , in said county of , expose to sale at public auction, all and singular the said premises, with the appurtenances; at which sale [a part of] the said premises hereinafter described were sold to the said party of the second part for the sum of dollars, that being the highest sum bid for the same; and,

WHEREAS, the proceedings of the said commissioners in the premises were duly reported to the said court, and the sale approved and confirmed, on the day of , one thousand nine hundred and , as by the records of the said court more fully appears; and the said commissioners were thereupon, by an order of said court then made, directed to execute to the said party of the second part, a conveyance of said premises, pursuant to the sale so made as aforesaid.

NOW THIS INDENTURE WITNESSETH: That the said parties of the first part, pursuant to the direction and authority to them given, and for and in consideration of the sum of money so bid as aforesaid, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have bargained, sold, aliened, conveyed, and confirmed, and by these presents do bargain, sell, alien, convey, and confirm unto the said party of the second part, all the estate, right, title, interest, claim, and demand of the said parties of the first part, and also all the right, title, interest, claim, and demand of all and singular the several and respective parties to the proceedings in partition aforesaid, of, in, and to all [*here insert description of the premises*], TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part thereof:

TO HAVE AND TO HOLD the said above-bargained premises, with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns, to his and their own proper use and behoof forever; as fully and absolutely as the said parties of the first part can and ought to grant and convey the same, pursuant to the statute and their authority as aforesaid.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of

[*Signature of witness.*]

A. B., [SEAL.]

C. D., [SEAL.]

E. F., [SEAL.]

Commissioners.

818. Deed by Mortgagee, on Foreclosure by Advertisement.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part:

WHEREAS, M. N., by a certain indenture of mortgage, bearing date the day of , one thousand nine hundred and , for the considera-

tion of the sum of dollars, did bargain, sell, and convey unto A. B., his heirs and assigns forever, the premises hereinafter described and granted [or, premises in said mortgage particularly described, and of which the premises hereinafter described and granted are a part], with the appurtenances, subject to a proviso, in the said indenture of mortgage contained, that the same should be void on the payment by the said M. N., his heirs, executors, administrators, or assigns, of the sum of dollars, in the manner particularly specified in the condition of a certain bond or obligation, bearing even date with the said indenture of mortgage; with a special power in the said indenture of mortgage contained [*here recite the power — e. g., thus*], authorizing the said A. B., his heirs, executors, administrators, and assigns, if default should be made in the payment of the said sum of money mentioned in the condition of the said bond or obligation, with the interest, or of any part thereof, to sell and dispose of the mortgaged premises, or any part thereof, by public auction, for payment thereof; and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance in the law for the same, in fee simple; and,

WHEREAS, the said indenture of mortgage has been duly recorded according to law, in the office for , at , in liber , of mortgages, page , as by the said indenture of mortgage, and the record thereof, and of the power therein contained, will more fully appear; and,

WHEREAS, default having been made in the payment of dollars of the money intended to be secured by the said indenture of mortgage, by which the power to sell became operative, and no suit or proceeding having been instituted to recover the same, the mortgaged premises hereinafter particularly described, were, on the day of , one thousand eight hundred and , sold under said power by public auction to the said party of the second part for the sum of dollars, being the highest sum bid for the same, due and sufficient notice having been previously given of such sale, by advertisement published for twelve weeks successively, once in each week, in a newspaper entitled the , printed in the town of , in county, being the county [or, one of the counties] in which the mortgaged premises are situated, and by affixing a copy of such notice twelve weeks prior to the time therein specified for such sale, on the outward door of the courthouse, in the town of , being the building in which the county court is directed to be held in said county [*nearest to the said premises*]; and by duly serving a copy of said notice at least fourteen days prior to the time therein specified for such sale, upon said M. N. [or, upon O. P., the executor of said M. N., he being deceased], and upon O. P. and Q. R., grantees [or, mortgagees], of the premises, and on S. T. and U. V., being all the persons having any claim or lien on said premises subsequent to said mortgage, as required by law.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the party of the first part, for and in consideration of the sum so bid, as aforesaid, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all [*here insert description of the premises*]:

TOGETHER WITH all and singular the tenements, hereditaments, and ap-

purtenances thereunto belonging, or in anywise appertaining, as the same are described and conveyed in and by the said indenture of mortgage; and, also, all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said M. N., as well as of the said party of the first part, of, in, and to the above-described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part hath power and authority to grant and sell the same, by virtue of the said indenture of mortgage, and of the statute in such case made and provided, or otherwise:

To HAVE AND TO HOLD the said above-granted premises, with their appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS, ETC.

819. Deed by a Referee, Pursuant to a Judicial Sale, An Administratrix, a Husband and Wife in Right of the Wife, the Wife being also an Executrix, and Infants, by their Guardians, Joining as Parties.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between M. N., special referee and trustee, appointed by the supreme court, party of the first part, A. B., of , administratrix with the will annexed of C. B., deceased, and the said A. B., in her own right, C. D., of , and E. D., his wife, in right of the said E. D., and the said E. D. as executrix of the last will and testament of G. H., deceased, J. H., of , and K. H., of , by J. K., their guardian, parties of the second part, and Y. Z., of , of the third part;

WHEREAS, at a special term of the supreme court of the state of , held for the county of , at , on the day of , one thousand nine hundred and , it was among other things ordered, adjudged, and decreed by the said court, in a certain cause then pending in the said court, between [*here name the parties to the suit*], that the said M. N., as such referee and trustee, for that purpose appointed by the said decretal order, proceed with all convenient speed, to sell for cash, all real estate which the said C. B., deceased, died seized or possessed of, or entitled to, and that each distinct farm, tract, or lot be sold separately, and at public auction, in the county of , by or under the direction of said referee and trustee, and that said referee and trustee give public notice of the time and place of such sale, by advertising the same twice a week, for three weeks, in the city of , and once a week, for three weeks, in any county in this state in which the property may be situated, as in case of sale of mortgaged premises in suits for the foreclosure of mortgages on lands, and that such referee and trustee execute to the purchaser or purchasers good and sufficient deed or deeds of conveyance therefor; and it was further ordered, adjudged, and decreed, in and by the said decretal order, that the parties to the said suit, respectively — that is to say, the adult parties, personally, and the said infant defendants by their several *guardians ad litem* [who were thereby severally appointed and authorized for that purpose] — unite with the said referee and trustee in such deed or deeds of conveyance; and that the said E. D., if living, unite in the said deed or deeds as such executrix as aforesaid, and in case the said E. D. should die before the said sale and conveyance, then it was ordered that no proceedings be had

towards such sale, until some party to said suit should obtain letters of administration with the will annexed, of the goods, chattels, and credits not administered of the decedent, G. H., thereby left without a personal representative, and that the party obtaining such letters of administration also unite as such in the said deed or deeds of conveyance; and,

WHEREAS, the said M. N., the said party of the first part, as referee or trustee aforesaid, in pursuance of the said decretal order of the said court, did, on the day of , one thousand eight hundred and , sell at public auction, at the Merchants' Exchange, in the city of , the premises hereinafter mentioned and described, due notice of the time and place of such sale being first given, agreeably to the said decretal order, by advertising the same twice a week, for three weeks and upwards, in a newspaper published in the city of , and once a week, for three weeks and upwards, in a newspaper published in the county of , in which county part of the property to be sold is situated, such advertisement being as in the case of sales of mortgaged premises in suits for the foreclosure of mortgages on lands; at which sale the premises hereinafter described were struck off to the said party of the third part for the sum of dollars, that being the highest sum bidden for the same, and he being the highest bidder therefor.

NOW THIS INDENTURE WITNESSETH: That the said party of the first part, as referee and trustee as aforesaid, and the parties of the second part to these presents, in order to carry into effect the sale so made by said party of the first part, and in pursuance of said decretal order, and in consideration of the premises, and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the third part to the said party of the first part, the receipt whereof is hereby acknowledged by the said party of the first part, have bargained and sold, and by these presents do bargain, sell, and convey unto the said party of the third part all that certain lot, piece, or parcel of land [*describing it*], together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well at law as in equity, of the said parties of the first and second parts, and of each and every of them, of, in, and to the above-described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the third part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first and second parts have hereto set their hands and seals, the day and year first above written.

| | | |
|-------------------------------------|------------------------------------|---------|
| Signed, sealed, and delivered | M. N., <i>Trustee and Referee.</i> | [SEAL.] |
| in presence of | A. B., <i>Administratrix, etc.</i> | [SEAL.] |
| [<i>Signatures of witnesses.</i>] | A. B., | [SEAL.] |
| | C. D., | [SEAL.] |
| | E. D., | [SEAL.] |
| | E. D., <i>Executrix, etc.</i> | [SEAL.] |
| | J. H. and | [SEAL.] |
| | K. H., | [SEAL.] |
| | By J. K., <i>their Guardian.</i> | |

III. DEEDS UPON PECULIAR CONSIDERATIONS.

820. Deed to Correct Mistakes in a Prior Conveyance.

THIS INDENTURE, made this day of , , between A. B., of , merchant, of the first part, and Y. Z., of , farmer, of the second part, WITNESSETH:

WHEREAS, the said A. B. did, on or about the day of , , execute and deliver to the party of the second part [*or, to one Y. Z., under whom the party of the second part hereto claims*], for the consideration therein mentioned, a conveyance of certain lands in , hereinafter more particularly described, which said conveyance is recorded in the office of the , of county, book , page , of conveyances; and,

WHEREAS, in said conveyance, by mistake, the words were written instead of the words [*or otherwise specify the errors*]; and,

WHEREAS, to prevent difficulties hereafter, it is expedient to correct said errors;

NOW THEREFORE, THIS INDENTURE WITNESSETH: That the said party of the first part, in consideration of the premises and of one dollar to him paid by the party of the second part, hereby grants, conveys, releases, and confirms unto the said party of the second part, his heirs and assigns forever, all [*etc., inserting description, and concluding as in other cases.*]

821. Deed Confirming a Prior Voidable Deed.

THIS INDENTURE, made this day of one thousand nine hundred and , between A. B., of , in the county of , and state of , farmer, of the first part, and Y. Z., of , in the said county, merchant, of the second part.

WHEREAS, by a deed bearing date on the day of , , and therein mentioned to be made by the party hereto of the first part [with one C. D.] of the one part, and [*or, unto*] the said Y. Z., of the other part, and in consideration of , the premises hereinafter described were granted and conveyed, or intended so to be, to the said Y. Z., his heirs and assigns forever; and,

WHEREAS [*here recite defect which rendered the deed voidable — e. g., infancy, thus:*] the said A. B., at the time of the date and making the said in part recited deed, was not of the age of twenty-one years, but has since attained to such age, and has this day, and before the execution of these presents, duly sealed and delivered the said in part recited deed.

NOW, THIS INDENTURE WITNESSETH: That [as well in the performance of a covenant for further assurance in the said deed contained, as also] for and in consideration of the sum of dollars, to him, the said A. B., in hand paid by the said Y. Z., the receipt whereof the said A. B. does hereby acknowledge, he, the said A. B., has, and now by these presents does, ratify approve, and confirm¹ said deed, and remise, release, and quitclaim unto the said Y. Z., in his actual possession now being, by virtue of the before-mentioned deed, and to his heirs and assigns, all [*here insert description of premises*], together with all the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

¹ These are the appropriate words for such a deed. ² Hilliard's R. P. 315.

TO HAVE AND TO HOLD all and singular the above-described premises, together with the appurtenances, and every part thereof, unto said party of the second part, his heirs and assigns forever.

AND THE SAID [*continuing as in Form 780, from the * to the end.*]¹

822. Short Form of the Same; By Indorsement on the Prior Deed.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, the grantor within named, do by these presents grant, ratify, and confirm unto Y. Z., of _____, all the estate which I may have in the premises within described with the appurtenances,

TO HAVE AND TO HOLD unto him, the said Y. Z., and his heirs and assigns forever.

WITNESS my hand and seal, this _____ day of _____, _____.
Signed, sealed, and delivered in presence of _____ A. B. [SEAL.]
[*Signature of witness.*]

823. Release by a Trustee to the Grantee of his Cestui que Trust.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS M. N. heretofore obtained a judgment against O. P., of _____, whereon a writ of *feri facias* was issued; and all the estate, right, title, and interest of the said O. P. to the premises hereinafter mentioned and described, together with divers other premises, was sold by the sheriff of the county of _____, under and by virtue of the aforesaid writ; and,

WHEREAS, all the estate, right, title, and interest of the said O. P., so sold as aforesaid, was his life estate in and to the said premises; and,

WHEREAS, the said M. N. became the purchaser thereof; and afterwards, by indenture bearing date the _____ day of _____, in the year one thousand eight hundred and _____, and which was recorded in the office of the _____ in and for the county of _____, in liber _____ of conveyances, page _____, on the day of _____, _____, as by reference thereto more fully appears, conveyed to me, A. B., of _____, in trust for the benefit of the said O. P., all his right, title, and interest in and to the premises herein mentioned and described, together with divers other premises in the said indenture above referred to, as by reference to the record thereof will appear:

NOW, THEREFORE, KNOW YE, that I, A. B., for the purpose of carrying into effect the said trust, and at the request of the said O. P., which said request is testified by his signature indorsed hereon, and in consideration of one dollar to me in hand paid by Y. Z., of _____, have, and by these presents do, remise, release, and quitclaim to the said Y. Z., and to his heirs and assigns, all my right, title, and interest in and to all [*describing premises*], together with the appurtenances;

TO HAVE AND TO HOLD, unto the said Y. Z., his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, in the year one thousand nine hundred and _____.
Signed, sealed, and delivered in presence of _____ A. B. [SEAL.]
[*Signature of witness.*]

¹ A covenant for further assurance may properly be inserted. See Form 755.

824. Partition Deed.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and C. D., of , in the said county, farmer, of the second part, and E. F., of aforesaid, mason, of the third part;

WHEREAS, the parties hereto have and hold as tenants in common [*or*, as joint tenants] in equal parts [*or*, viz., the said A. B. two equal undivided sixths, and the said C. D. one equal undivided sixth, and the said E. F. three, etc., of] a certain tract, piece, or parcel of land situate in , being the same premises conveyed to them by M. N. by deed bearing date the day of , [*or*, devised to them by the will of M. N., *or otherwise, according to the fact*]; and,

WHEREAS, the parties hereto have mutually agreed to make partition of said land and hold their respective shares in severalty:

NOW THIS INDENTURE WITNESSETH, as follows:—*First*. The said A. B., party of the first part, shall from henceforth have, hold, possess, and enjoy in severalty by himself, and to him, and his heirs and assigns, for his share and proportion of the said lands and premises, all [*here insert description of the part allotted to him*]; and the said parties of the second and third parts, in consideration of the premises [and of the sum of dollars to them paid by the said A. B. for equality of partition, the receipt whereof is hereby acknowledged], do hereby give, grant, set over, convey, release, and confirm unto the said A. B., the party of the first part, his heirs and assigns forever, the last above-described premises:

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest [dower and right of dower], property, possession, claim, and demand whatsoever of the said parties of the second and third parts, both in law and in equity, of, in, and to the above-granted premises, with the hereditaments and appurtenances:

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the first part, his heirs and assigns forever [*if there is any incumbrance, add, subject to, etc., specifying it*].

AND THE SAID parties of the second and third parts do hereby severally, and not jointly, but each for himself, and for his heirs, executors, and administrators, covenant, promise, and agree, to and with the said party of the first part, that he, the said A. B., his heirs and assigns, shall or lawfully may, from time to time, and at all times hereafter, forever, freely, peaceably, and quietly, have, hold, occupy, possess, and enjoy the said first-described piece or allotment of land, with the appurtenances, and receive and take the rents, issues, and profits thereof, without any molestation, interruption, or denial of them, the parties of the second and third parts, their heirs or assigns, or of any other person or persons whatsoever, lawfully claiming or to claim by, from, or under them, or either of them, or by or with his or their act, privity, or procurement.

Second. The said C. D., party of the second part, shall from henceforth have, hold, possess, and enjoy in severalty by himself, and to him and his heirs and

¹ Omit these words, unless a wife joins to bar her dower as to this allotment.

assigns, for his share and proportion of the said lands and premises, all [*here insert description of the part allotted to him*]; and the said parties of the first and third parts do hereby give, grant, set over, convey, release, and confirm unto the said C. D., the party of the second part, his heirs and assigns forever, the last above-described premises:

TOGETHER WITH [*etc., as above; and so on with the allotment to the party of the third part*].

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of [*Signatures and seals.*]

[*Signature of witness.*]

825. Deed Among Heirs, in Confirmation of Devises, with Covenant to Abide by the Will.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., widow of S. B., late of , in the county of , farmer, deceased, of the first part; C. B., of the same place, and L. B., his wife, of the second part; E. B., of the same place, and J. B., his wife, of the third part;

WHEREAS, the said S. B., late of , in the county, farmer, deceased, being in his lifetime seized of the real estate therein mentioned, did, in due form of law, make and publish his last will and testament in writing, containing devises, of which the following are a copy [*here set forth the provisions, or, refer to the will on record*]; and,

WHEREAS, the said testator, after making the said will, died seized as aforesaid, without revoking or altering the same; and,

WHEREAS, the said A. B., party of the first part, is the widow, and the said C. B. and E. B. are the children, devisees, and heirs-at-law of the said S. B., the testator, deceased [*and, WHEREAS, doubts have been suggested whether the words contained in the said will are sufficient in the law to pass an estate in fee simple to the said A. B. for the lot of land in Third street, devised or intended to be devised to her, and also to pass estates in fee to the said C. B. and E. B., in and to the several premises respectively devised or intended to be devised to them*]; and the said several parties to these presents, being willing and desirous that the real intentions of the said testator should be carried into effect notwithstanding any errors or imperfections which may or do exist in the said will, have agreed to make and execute an instrument of writing, under their respective hands and seals, which shall be sufficient for that purpose:

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said C. B. and L. B., his wife, and E. B. and J. B., his wife, for the consideration aforesaid, and for the further consideration of one dollar to them in hand paid by the said A. B., the receipt of which they do hereby acknowledge, have granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents do fully, freely, and absolutely grant, bargain, sell, alien, remise, release, and confirm unto the said A. B. in her actual possession now being, and to her heirs and assigns forever, all that lot of land situate in Third street, in the city of New York, and mentioned in the said will as given to her; together with the appurtenances, and also all and singular the right, title, interest, dower, claim, and demand whatsoever, both at law and in equity, of the said C. B. and L. B., his wife, and E. B. and J. B., his wife, of, in, and to the same:

TO HAVE AND TO HOLD the said lot of ground in Third street, with the appurtenances, to the said A. B., her heirs and assigns forever; and the said C. B. and L. B., his wife, and E. B. and J. B., his wife, do further release and confirm unto the said A. B., the one-half of the dwelling-house at _____, in which the said S. B., the testator, resided, to have and to hold the same to the said A. B. during the term of her natural life.

AND THIS INDENTURE FURTHER WITNESSETH: That the said E. B. and J. B., his wife, for the consideration aforesaid, and also for the further consideration of the sum of one dollar to them in hand paid by the said C. B., the receipt whereof they do hereby respectively acknowledge, have granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents do fully, freely, and absolutely grant, bargain, sell, alien, remise, release, and confirm unto the said C. B., and to his heirs and assigns forever, the house and land now in his possession, situate in _____ aforesaid, and devised or intended to be devised to him in and by the aforesaid will, together with the appurtenances, and also all the estate, right, title, interest, dower, or right of dower, claim, and demand whatsoever, both at law and in equity, of them, the said E. B. and J. B., his wife.

TO HAVE AND TO HOLD the said premises, with the appurtenances, to the said C. B., his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said C. B., his heirs and assigns forever.

AND THIS INDENTURE FURTHER WITNESSETH: That the said C. B. and L. B., his wife, for and in consideration aforesaid, and for the further consideration of one dollar to them in hand paid by the said E. B., at or before the ensealing and delivery of these presents, the receipt of which they do hereby acknowledge, have granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents do fully, freely, and absolutely grant, bargain, sell, alien, remise, release, and confirm unto the said E. B. in his actual possession now being, and to his heirs and assigns forever, the dwelling-house of the said testator [subject to the life estate of the said A. B. in a moiety thereof], together with the appurtenances; and also all the estate, right, title, interest, dower, and right of dower, claim, and demand whatsoever, at law and in equity, of the said C. B. and L. B., his wife, of, in, and to the same:

TO HAVE AND TO HOLD all and singular the said premises, with the appurtenances, unto the said E. B., his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said E. B., his heirs and assigns forever.

AND THIS INDENTURE FURTHER WITNESSETH: That the said E. B., for himself, his heirs and assigns, doth hereby freely grant and confirm unto the said C. B., his heirs and assigns forever, the use and privilege of a road to pass and repass to and from the river, with wagons, horses, and carriages, through the land hereinbefore conveyed to the said E. B., to have and to hold the said use and privilege to the said C. B., and to his heirs and assigns forever.

AND THE SEVERAL and respective parties to these presents, each of them for himself, herself, and themselves, his, her, and their heirs, executors, and administrators, do hereby mutually covenant, promise, grant, and agree to and with the other and others of them, his, her, and their heirs, executors, administrators, and assigns, that in every respect and particular, not hereinbefore especially agreed upon and provided for, they, the said parties, and each and every of them respectively, and their and each and every of their legal representatives, shall and will in all things abide by the will of the said testator, and carry the same into full execution and effect, agreeably to the

intentions of the said testator, and according to the true intent and meaning of the same.

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of [Signatures and seals.]

[Signature of witness.]

826. Deed of Gift.¹

THIS INDENTURE, made this day of , one thousand nine hundred and , between A. B., of , in the county and state of , merchant [and C. B., his wife], of the first part, and S. B., of the same place, son of the said A. B., physician, of the second part:

WITNESSETH: That the said A. B., as well for, and in consideration of the natural love and affection, which he has unto the said S. B., as also for the better maintenance, support, and livelihood of him, the said A. B., by these presents does give, grant, alien, convey, and confirm unto the said S. B., his heirs and assigns forever, all [*here insert description of the premises*]:

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right [dower, and claim of dower²], title, interest, property, claim, and demand, whatsoever, of the said party [*or, parties*] of the first part, of, in, and to the said premises, with the appurtenances, and every part thereof:

TO HAVE AND TO HOLD all and singular the above-granted premises, with the appurtenances, unto the said S. B., his heirs and assigns, to their own proper use and behoof, forever.

IN WITNESS WHEREOF, the party [*or, parties*] of the first part has [*or, have*] hereunto set his hand and seal [*or, their hands and seals*], the day and year above written.

Signed, sealed, and delivered in presence of [Signatures and seals.]

[Signature of witness.]

827. Deed of Exchange.³

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part:

WITNESSETH: That the said party of the first part has given and granted, and by these presents does give and grant unto the said party of the second part, his heirs and assigns forever, all [*here insert description of premises*], together with the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, in exchange of and for the lands herein-after mentioned, of the said party of the second part.

¹ For the form of a covenant to stand venient for each party to an exchange to seized to uses, see Form 688. give an ordinary deed to the other. For

² Omit these words, unless a wife joins.

³ This form of conveyance is rarely used No. 583, *ante*.
in this country. It is commonly more con-

TO HAVE AND TO HOLD the said premises, with the appurtenances, and every part thereof, to the said party of the second part, his heirs and assigns forever, in exchange for the said lands hereinafter mentioned. [*Here may insert the covenants, if any, which are usually the covenants against incumbrances and for further assurance.*]

And the said party of the second part has likewise given and granted, and by these presents does give and grant, unto the said party of the first part, his heirs and assigns forever, all [*here insert description of premises*], together with the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, in exchange of and for the lands hereinafore mentioned, of the said party of the first part.

TO HAVE AND TO HOLD the said premises, with the appurtenances, and every part thereof, to the said party of the first part, his heirs and assigns forever, in exchange for the said lands hereinafore mentioned. [*Here may insert the covenants, if any, which are usually the covenants against incumbrances and for further assurance; and may, if desired, add the following proviso for re-entry in case of eviction.*]

PROVIDED, ALWAYS, nevertheless, and these presents are upon this condition, and it is the true intent and meaning of the parties hereunto, that if it shall happen that either of the said parties to these presents, their executors, administrators, or assigns, shall at any time hereafter, during the said respective terms above granted, by color or means of any former or other conveyance, or otherwise howsoever, be ousted or evicted of and from the possession of either of the said messuages or tenements, and other the premises, so respectively granted in exchange as aforesaid, or any part thereof, then and in any such case the grant and conveyance made by these presents shall be utterly void and of none effect; and thenceforth it shall and may be lawful to and for the party or parties so ousted or evicted, into his or their said former messuage or tenement and premises, with all and singular the appurtenances, to re-enter, and the same to have again, repossess, and enjoy, as of his and their former estate or estates, anything herein contained to the contrary notwithstanding.

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of [Signatures and seals.]

[Signature of witness.]

IV. VARIOUS DESCRIPTIONS OF PROPERTY AND APPURTENANCES; EXCEPTIONS; RESERVATIONS; CONDITIONS.

828. Description of Land by Number of Lot and Township.

All that certain tract or parcel of land known as lot No. two (2), in township No. three (3), in range four (4) [or, as the southeast quarter of the northeast quarter of section twenty-two (22), of township four (4), of range six (6), east of the principal meridian], in the county of _____, and state of _____ aforesaid, containing _____ acres.¹

829. Description by Metes and Bounds. 2

All that certain tract, piece, or parcel of land situate, lying, and being in the town of _____, county of _____, and state of _____, known and described

¹ This form conveys the whole lot and the reference to the area will be controlled by the words referring to the lot. Hathaway v. Power, 6 Hill. 458.

² Where a land is conveyed by metes and bounds, running from fixed and visible monuments, whether natural or artificial, such monuments or marks appearing upon the

as follows: Beginning at a stake and stones in the northeast corner of the meadow lot, now or late of M. N., running thence northerly¹ sixteen (16) rods; thence north twenty-three degrees (23°) east, ten (10) rods; thence south twenty-five degrees, ten minutes (25° 10') east, sixteen (16) rods, ten (10) inches; thence south by west to the point of beginning, containing about acres, be the same more or less.²

830. The Same of a City Lot.

All that certain lot, piece, or parcel of land, with the buildings thereon erected, situate, lying, and being in the Nineteenth ward of the city of New York, bounded and described as follows — to wit: Beginning at a point on the westerly side of Second avenue, distant twenty (20) feet and five (5) inches northerly from the northerly side of Fiftieth street, and running thence westerly through a party wall and parallel³ with Fiftieth street, seventy (70) feet; thence northerly and parallel with Second avenue, twenty (20) feet; thence easterly to and through another party wall and parallel³ with Fiftieth street, seventy (70) feet to the westerly side of Second avenue, and thence southerly along the said westerly side of Second avenue, twenty (20) feet to the point or place of beginning.

831. Description by Reference to a Map.

All those lots of ground situate, lying, and being in the ward of the city of , known and distinguished on a certain map of the property of M. N., made by O. P., city surveyor, and now on file [*or*, filed on or about the day of , *or*, intended to be filed], in the office of , in said , by the numbers one hundred and seventeen (117) and one hundred and eighteen (118).⁴

832. Description Bounding by Rivers, Highways, and Other Boundaries.

All that tract of land situate, lying, and being in the town of , in said county of , and bounded and described as follows: on the east by the Ox Bow creek,⁵ on the southeast by the northwest bank of the Salmon river,⁶ on the south by land, now or late of M. N., on the west by [the east side of]⁷ the highway leading to P.

land must be adhered to, and will control the distances, courses, and area specified. *Wendell v. Jackson*, 8 Wend. 188; *Jackson v. Camp*, 1 Cow. 605.

¹ Northerly, southward, etc., if used without qualification, are taken to mean due north, due south, etc. *Brandt v. Ogden*, 1 Johns. 156; *Jackson v. Reeves*, 3 Cai. 293.

² The specifications of the number of acres cannot control a palpable description of a larger area by monuments, courses and distances. *Jackson v. McConnell*, 19 Wend. 175.

³ This word should not be inserted where there can be any mistake, unless it is material, as a line described as parallel may be so located, though it violates course and distance. *Northrop v. Sumney*, 27 Barb. 196.

⁴ To this is frequently added the boundaries, as in the preceding form; but the map will control such bounds if there be any discrepancy.

⁵ This will give the thread of the stream, if it is not navigable, and the tide does not ebb and flow. If it is intended not to convey the bed of the creek, the west bank should be specified as the boundary. *Jackson v. Loun*, 12 Johns. 252; *Luce v. Corley*, 24 Wend. 451; *Child v. Starr*, 4 Hill, 369.

⁶ This will give only to high-water mark, if the river is navigable. *Halsey v. McCormick*, 13 N. Y. 296; *Wiswall v. Hall*, 3 Paige, 313. There are local exceptions, however.

⁷ Where a street or highway is given as a boundary, the centre line of the way is intended, unless the side is expressly fixed

833. Description of Water Lot.

All that certain water lot, or vacant ground and soil under water, to be made land, and gained out of the North, or Hudson river, and bounded, described, and containing as follows: Beginning [*here give metes and bounds*].

834. Description of Land between High and Low Tide.

Thence feet to the line of mean high-water mark of the Long Island sound; thence along said mean high-water mark of said Long Island sound, and about north 40 degrees 36 minutes, east, about 628 feet, to the point, or place of beginning, together with the land abutting on said property, and lying between the said mean high-water line and the low-water line of said Long Island sound, and any and all rights and privileges therein belonging to the said parties of the first part.

835. Conveyance of Right of Way.

Together with the right of way forever for ingress, egress, and regress to said party of the second part, his heirs and assigns, and the occupants or grantees of said lands and premises hereinbefore described, and hereby conveyed, or any part thereof, and his and their servants, and any and all other person or persons whomsoever, for his or their use, benefit, or advantage, with the right at all times to pass and repass on foot, and with animals and vehicles, over the following portions of other lands of said parties of the first part, not herein or hereby conveyed, viz.: [*here give exact statement of rights of way, with metes, bounds, etc.*].

836. Description of Unpatented Land.

All that tract or parcel of land situated [*etc.*], containing acres, be the same more or less, surveyed or intended to be surveyed, by virtue of a warrant for the same, bearing date the day of , one thousand eight hundred and , granted to the said A. B., as by the said warrant remaining filed in the office of , will appear, subject to the payment of whatever may be due to the commonwealth for patenting the same.

837. Description of an Undivided Share.

The one undivided third part of all [*etc., describing the premises as in other forms*].

838. Description of an Equity of Redemption.¹

All that certain lot, piece, or parcel of land [*describing it by bounds, or otherwise, as in other forms*], the premises above described being subject to a certain indenture of mortgage made by M. N. to O. P., to secure payment

upon. Jackson v. Hathaway, 15 Johns. Sandf. 323; Bissell, v. N. Y. C. R. R. Co. 23 N. 447. Even bounding by a line described as Y. 61.

"commencing at the side of the street and running along the street," or by courses and distances which produce a line along the side of the street, or by a map which gives the side as a boundary, will convey the land to the centre. 13 Conn. 23; Sizer v. Devereaux, 16 Barb. 160; Hammond v. McLachlan, 1

These are the established rules in New York. In some other States, such conveyances do not pass the fee of the roadway.

It is, however, the general rule that bounding the land upon a way amounts to a covenant that such way exists.

¹ A conveyance in these terms does not

of the sum of dollars, bearing date on the day of , 18 [and recorded in the office of the , of the county of , in liber , of mortgages, page], on which the sum of dollars, with interest from the day of , is due.

839. Same; Where the Grantee Covenants to Pay the Mortgage.

All that certain lot, piece, or parcel of land [*describing it by bounds, or otherwise, as in other forms*], the premises above described, being subject to a certain indenture of mortgage made by M. N. to O. P., to secure payment of the sum of dollars, bearing date on the day of , 18 [and recorded in the office of the of the county of , in liber , of mortgages, page], on which the sum of dollars, with interest from the day of , is due, which said mortgage forms part of the consideration above mentioned, and which the said party of the second part hereby assumes and agrees to pay.¹

840. Description of a Lot, with a Right of Way and of Making a Drain.

All [*etc., bounding the lot as in other forms, and adding:*] Together with a right of way in and over a certain strip of land along the west side of the store on the above-granted premises, for the said party of the second part, his heirs and assigns, and his and their servants, and the tenants and occupants from time to time of the premises above granted, and any other person or persons for his and their benefit and advantage [in common with the said party of the first part, his servants, and the tenants and occupants of his premises adjoining], at all times freely to pass and repass, on foot, or with animals, vehicles, loads, or otherwise, to and fro, between the premises hereby granted and the highway or street, the said strip of land and way being feet wide. And also together with the right to enter a drain from the above-granted premises into the drain now running under the said strip of land, to be used as a way as aforesaid, and the same to use as a sewer or drain from the above-granted land to the common sewer in the street or highway [subject, nevertheless, to the moiety or equal half part of all necessary charges and expenses which shall from time to time accrue, in paving, repairing, and cleansing the said way and drain].

841. Description of a Lot Abutting on an Alley, with Right of Way Therein, Subject to Charges and Covenants.

All that certain lot, piece, or parcel of land, with the buildings thereon erected, situate in the Fifth ward of the city of New York, on the westerly side of Broadway, being part of a tract of land formerly called "The Pasture Lots," formerly the property of Augustus Van Cortlandt and Frederick Van

render the grantee personally liable for the mortgage debt. To raise such liability, there must be an agreement to pay the debt, made either with the mortgagee or holder of the mortgage, or with some person legally or equitably bound to pay it. Tillotson v. Boyd, 4 Sandf. 518; Stebbins v. Hall, 39 Barb. 524.

¹ The above form, even without the express agreement to pay the mortgage, will render

the grantee liable to indemnify his grantor against the mortgage. Thompson v. Thompson, 4 Ohio St. 333; Hartley v. Harrison, 24 N. Y. 172, and cases cited; Townsend v. Ward, 27 Conn. 610. If the grantor is personally liable on the mortgage, this covenant will render the grantee liable directly thereon; also for any deficiency on foreclosure. Trotter v. Hughes, 12 N. Y. 74.

Cortlandt, and distinguished in maps and conveyances relating thereto as lot No. 16 (sixteen), and the letters F. V. C., being bounded as follows — to wit: Beginning at a point on the westerly side of Broadway, distant southwardly fifty feet from the southwestly corner of Broadway and White street; thence running westerly along the lot distinguished on said maps and conveyances by the number 17, and the letters A. V. C., to a certain alley in the rear thereof that extends from White street to the street now called Franklin street, lately Sugar-Loaf street; thence southerly along said alley to the lot distinguished on the said maps and conveyances by the number 15, and the letters A. V. C.; thence easterly along the said last-mentioned lot to Broadway; and thence northerly along the said Broadway to the place of beginning; containing in front and rear, each twenty-five feet, and in length on each side, one hundred and fifty feet, be the same more or less. And also the right and privilege to use the said alley as a way or passage from the said lots to the aforesaid streets in common with all the proprietors of the other lots of ground adjoining upon that alley; which said alley is twenty-five feet in width, and was made by land taken off the rear of the said lot and the other lots fronting upon Broadway in the same range and block with it; whereby those lots have become reduced in length from one hundred and seventy-five feet (their original length) to one hundred and fifty feet, or thereabouts, be the same more or less. And it is understood that all charges and expenses of sustaining the said alley, or relating thereto, are charged and chargeable upon all and every of the lots adjoining upon that alley in equal proportions. And it is further understood and agreed, that the lot of ground hereby intended to be granted, bargained, and sold is hereby bargained, granted, and sold, subject to that charge or incumbrance, as also to all such covenants, conditions, and restrictions as may be contained in any existing deed or writing whatsoever establishing the said alley, and for restraining the owners of the said lot of ground hereby granted from erecting any buildings other than a coach-house or stable fronting on the said alley.

842. Grant of Easement Appurtenant to a Lot Bounding on a Court or Alley.

[Add:] Together with one-half of the part of said court or alley which lies in front of the premises hereby conveyed, subject to a perpetual right of way over the same to all and every the owners and occupants of the premises lying adjacent to and abutting on said court or alley; and the parties of the first part hereby convey to the said party of the second part, his heirs and assigns, a perpetual right of way from _____ street through the said alley or court to and from the premises hereby conveyed, in common with said owners and occupants, and also a perpetual right and privilege to use in common with them the drain or sewer running through the centre of said court or alley.

843. Premises Subject to Easement for Party Walls.

[Add:] Subject, nevertheless, to the use of the walls on the easterly and westerly sides respectively of the said lot, by M. N. and O. P., their heirs and assigns, the grantees of the said party hereto of the first part of the lots next adjoining the lot hereby conveyed on said sides respectively, as party-walls.¹

¹ If the easement is created by a deed on record, it is advisable to refer to it.

844. Premises Subject to Easement for Drain.

[*Add.*] Subject, nevertheless, to a sewer or drain passing through the premises hereby conveyed for the use and benefit of other premises of the said party of the first part, adjoining the same upon the south, said sewer and drain to remain as at present used for the benefit of the adjoining premises.¹

845. Description of Water Power.²

All [*etc., describing the land, as in other cases*], together with the privilege of bringing water from the dam to the mill thereon [*or, a mill to be erected thereon*], sufficient to keep a sawmill³ in operation, at all times when there is so much more than is wanted, by the party of the first part, his heirs or assigns, to drive a gristmill with three run of stones.³

846. Reservation of Ground for Streets, Etc.

[*Insert immediately after the boundaries:*] saving and reserving from and out of the hereby-granted premises such streets as are now or hereafter may be laid out through the premises hereby granted; and whenever any such streets may be laid out, over and across the said premises, that the same shall be made at the expense of the said party of the second part, his heirs or assigns, and be and forever remain public streets, in like manner as other public streets are or ought to be.

847. Exception and Reservation of Mines, with Covenants for Payment of Rent and Damages.

Excepting and reserving unto the said A. B., his heirs and assigns, all mines, veins, seams, and beds of coal, ironstone, and other minerals whatsoever, already found, or which may hereafter be found, upon or under the lands hereby assured, or expressed so to be, with full liberty of ingress, egress, and regress at all times for him, the said A. B., his heirs and assigns, and his and their servants, agents, and workmen in and upon the said lands, and either with or without horses and other cattle, carts, and wagons, and other carriages, for the purpose of searching for, working, getting, and carrying away the said mines and minerals, and with full liberty also for him, the said A. B., his heirs and assigns, to sink, drive, make, and use pits, shafts, drifts, adits, air-courses, and water-courses, and to erect and set up fire and other engines, machinery, and works, and to lay down railroads and other roads in, upon, under, and over the said lands, or any of them, for the purpose of more conveniently working and carrying away the said mines and minerals, and also to appropriate and use any part of the surface of the said lands for depositing, placing, and heaping thereon the minerals, waste, rubbish, and other substances which may be gotten from the said mines, and generally to do all other acts and things necessary or proper for working and getting the said mines and minerals according to the most approved practice of mining in the district:

PROVIDED, ALWAYS, that the said A. B., his heirs or assigns, do and shall pay

¹ See preceding note.

² For another form, measuring by capacity of flume, see Form 808.

³ Designating thus a particular use will not be construed to exclude by implication

other uses calling for no more than an equivalent power. *Cromwell v. Selden*, 3 N. Y. (3 Comst.) 253; *Wakely v. Davidson*, 26 N. Y.

387.

to the said Y. Z., his heirs or assigns, the annual sum of dollars for every acre, and so in proportion for any less quantity than an acre of land, the surface whereof shall be appropriated or used for any of the purposes aforesaid, so long as such appropriation or use shall continue, and until the surface shall be restored, as nearly as may be practicable, to its original state and condition before such appropriation or use commenced; and,

PROVIDED, also, that the working of the said mines shall be conducted in such a manner as not to endanger any buildings now being on the said lands, or which may hereafter be erected on the site of, or within yards of the site of any present buildings, and generally to do as little damage or injury to the surface of the said lands as shall be consistent with the proper working of the said mines; and,

PROVIDED, also, that the said A. B., his heirs or assigns, shall pay to the said Y. Z., his heirs or assigns, adequate compensation for all damage or injury which he or they, or his or their tenants may sustain by reason of the working of the said mines, or the exercise of any of the liberties and privileges hereby excepted and reserved, the amount of such compensation, and all other matters in difference which may arise between the parties in connection with the said excepted mines, minerals, liberties, and privileges to be ascertained by arbitration. [*For forms for which, see the GENERAL INDEX.*]

V. DEEDS CREATING OR CONVEYING PARTICULAR ESTATES OTHER THAN AN ABSOLUTE FEE.

848. Deed Conveying a Life Estate, with Remainder Over.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant [and C. B., his wife], of the first part, and W. X. and Y. Z., of , in the said county, gentlemen, of the second part, WITNESSETH: That the said party [or, parties] of the first part, in consideration of dollars to him [or, them] paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has [or, have] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does [or, do] grant, bargain, sell, alien, remise, release, convey, and confirm unto the said parties of the second part, all [*here insert description of the premises*].

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said W. X. and his assigns, for and during the natural life of said W. X., and upon his death then unto the said Y. Z., his heirs and assigns forever.

TOGETHER WITH [*etc., as in other forms*].

849. Deed by a Tenant for Life.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part, WITNESSETH: That the said party of the first part, in consideration of dollars to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and

confirm, unto the said party of the second part, and to his executors, administrators [or, his heirs], and assigns forever, all the estate, right, title, and interest of the party of the first part, to wit, an estate for and during his natural life in all [*here insert description of the premises*]: TOGETHER with the appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof.

To HAVE AND TO HOLD, all and singular, the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his executors, administrators [or, his heirs], and assigns, to his and their use for and during the natural life of the said party of the first part [*if there is any incumbrance, add, subject to, etc., specifying it*]. And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant, promise, and agree, to and with the said party of the second part, his executors, administrators [or, his heirs], and assigns, that the said party of the first part, at the time of the sealing and delivery of these presents, is lawfully seized in his own right [*or otherwise, as the case may be*], of a good, absolute, and indefeasible estate of freehold, for and during the natural life of the said , of and in all and singular the above-granted premises, with the appurtenances [*if conveyed subject to an incumbrance, say, subject as aforesaid*]. And the said party of the second part, his executors, administrators [or, his heirs], and assigns, shall and may, at all times hereafter during said life, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part or his assigns, or of any other person or persons lawfully claiming or to claim the same. And that the said party of the first part, at the time of the sealing and delivery of these presents, has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered in presence of

A. B. [SEAL.]

[*Signature of witness.*]

850. Assignment of Dower.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, and C. D., of said place, physician, of the first part, and Y. Z., of , in the said county, widow of W. Z., late of said place, deceased, of the second part:

WHEREAS, the said W. Z. was in his lifetime and at the time of his death seized in fee of certain lands and tenements in , which upon the decease of the said W. Z. descended to the said parties of the first part, subject to the dower right of the said party of the second part.

NOW THIS INDENTURE WITNESSETH: That the said parties of the first part have endowed and assigned, and by these presents do endow and assign unto the said party of the second part, the one-third part of the said lands and tenements, to wit [*here insert description of the part allotted to her*].

To HAVE AND TO HOLD the said premises unto the said party of the second part, widow as aforesaid, for and during her natural life, in the name of

dower, and in recompense and satisfaction of all the dower which she ought to have, of or in the said lands and tenements in _____, which belonged to and were of the said W. Z.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered [Signatures and seals of all parties.]
in presence of
[Signature of witness.]

851. Release of Dower.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the city of _____, in the county of _____, and state of _____, wife of C. B., of said city [or, widow of C. B., late of said city, deceased], in consideration of _____ dollars, to me paid by Y. Z., of _____, in said county, farmer [sole heir of said C. B., deceased], the receipt whereof is hereby acknowledged, have granted, remised, released, conveyed, and forever quitclaimed, and by these presents do grant, remise, release, and forever quitclaim unto the said Y. Z., and to his heirs and assigns forever,* all the dower and thirds, right and title of dower and thirds, and all other rights, title, interest, property, claim, and demand whatsoever, at law and in equity, of me, the said A. B., of, in, and to all [here insert description of premises; or, if the release is intended to be a general one, say, all and every the lands, tenements, and real estate, whereof the said C. B. died seized or possessed, or whereof he was seized or possessed, at the time of his intermarriage with the said A. B., or at any time since, wheresoever the same may lie and be situate], so that neither I, the said A. B., my heirs, executors, administrators, or assigns, nor any other person or persons, for me, them, or any of them, shall have, claim, or demand any dower or thirds, or any other right, title, claim, or demand, of, in, or to the same, or any part thereof, but thereof and therefrom shall be utterly barred and excluded forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, in the year one thousand nine hundred and _____.

Signed, sealed, and delivered in presence of _____ A. B. [SEAL.]
[Signature of witness.]

852. General Release of Dower in Consideration of Beneficial Provisions of Will.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS C. B., late of _____, deceased, by his will, bearing date the _____ day of _____, _____, and which has been duly proved in the court of the surrogate of the county of _____, bequeathed to me, A. B., his wife, _____ dollars in lieu of all dower and claim of dower in his estate:

NOW, THEREFORE, I, the said A. B., for and in consideration of the said bequest [to me now paid], and in pursuance and part performance of the said last will and testament of my said late husband, do hereby declare myself fully satisfied and contented therewith, and do hereby grant, remise, release, and forever quitclaim unto W. X., of _____, and Y. Z., of _____, trustees, appointed in and by the said last will and testament of my said late husband, their successors and assigns forever [continue as in Form 851, from the * to the end].

853. Short Form of Release of Dower by Indorsement on Deed.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., wife [or, widow] of the within-named C. B. [deceased], in consideration of dollars, to me paid by the within-named Y. Z., do grant, remise, release, and quitclaim unto the said Y. Z., all my right, title, interest, and dower in and to the within-described premises.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , in the year one thousand nine hundred and .

Signed, sealed, and delivered in the presence of A. B. [SEAL.]

[Signature of witness.]

854. Deed Conveying the Reversion in Fee, Subject to an Outstanding Life Estate.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part:

WHEREAS, C. B. [the mother of the said party of the first part], holds for the term of her natural life the premises hereinafter described, the reversion and remainder whereof belongs to the party of the first part and his heirs:

NOW THIS INDENTURE WITNESSETH: That the said party of the first part, in consideration of dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, his heirs and assigns forever, the reversion and remainder of all [*here insert description of the premises*].

TO HAVE AND TO HOLD the said reversion and remainder, and the rents, issues, and profits thereof, when it shall happen, upon the death of said C. B., in and of all and singular the above-granted premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever [*If there is any incumbrance, add, subject to, etc., specifying it.*]

AND the said party of the first part, for himself, his heirs, executors, and administrators, does covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said party of the first part is lawfully seized in his own right of a good, absolute, and indefeasible estate in remainder in the fee of said premises, with the appurtenances, immediately from and after the decease of the said C. B. [*if conveyed subject to an incumbrance, say, subject as aforesaid.*] That the said reversion and remainder now is, and the said premises and appurtenances immediately from and after the death of the said C. B., shall be free from all incumbrances [except as aforesaid]; that the said party of the first part has good right, full power, and lawful authority to convey the same as aforesaid, and that after the decease of the said C. B., he, and his heirs, executors, and administrators will warrant and defend the above-granted premises and appurtenances to the said Y. Z., his heirs and assigns forever, against the lawful demands of all persons.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered in the presence of A. B. [SEAL.]

[Signature of witness.]

855. Release of Rents.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between the mayor, aldermen, and commonalty of the city of New York, of the first part, and Y. Z., of , of the second part.

WHEREAS, the said parties of the first part did, by a grant under their common seal, bearing date the day of , in the year one thousand nine hundred and , grant, bargain, and sell unto M. N., and to his heirs and assigns forever, certain lands and premises, of which the lands hereinafter described are part and parcel, subject, however, to certain yearly rents or sums of money to be paid to the said parties of the first part and their successors, by the said grantees, their heirs and assigns forever thereafter, as by reference to the said indenture, or to the counterpart thereof, sealed and delivered by the said grantee, and now in possession of the said parties of the first part, will more fully appear; and,

WHEREAS, the said party to these presents of the second part hath represented to the said parties of the first part that he, the said party of the second part, hath become, and is now by diverse mesne conveyances, lawfully seized of the said premises hereinafter described, being a portion of the premises granted and conveyed by the above-mentioned indenture of grant; and, also, that said portion of said premises is chargeable with the sum of dollars of the yearly rent aforesaid and no more; and,

WHEREAS, the said party of the second part has paid to the said parties of the first part all the arrears of rent now due upon the said hereinafter described premises, and has also paid to them the further sum of dollars, in lieu and discharge of all and every the rent and rents which would hereafter become due and payable pursuant to said alleged agreement upon the said premises hereinafter described, under and by virtue of the said grant, less the annual sum of dollars, part and parcel thereof; and,

WHEREAS, the said parties of the first part, in consideration thereof, and at the request of the said party of the second part, have agreed to release the land hereinafter described unto the said party hereto of the second part, freed and discharged of and from the payment of the yearly rent aforesaid, and to hold and retain the residue of the lands as security for the arrears of rent now due, and of all and every the rent and rents which would hereafter become due and payable to the said parties of the first part upon the said premises, under and by virtue of the said grant, less the said annual sum of dollars, part and parcel thereof:

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said parties of the first part, for and in consideration of the said agreement, and of the said sum of dollars, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby for themselves and their successors remise, release, and quitclaim unto the said party of the second part, all that part of the said granted lands described as follows, to wit [*here insert description*], together with the hereditaments and appurtenances thereunto belonging, to the intent that the lands hereby released may be discharged from the payment of the said yearly rent as aforesaid, and that the residue of the lands in the said grant specified may remain to the said parties of first part, as heretofore.

TO HAVE AND TO HOLD the said lands and premises to the said party of the

second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever, free, clear, and discharged of and from all lien and claim under and by virtue of the said indenture of grant or counterpart aforesaid, and of and from all and every covenant, matter, clause, or thing in the said indenture or counterpart contained, relating to the payment of rent for the said premises hereby released, and of and from all actions, suits, costs, charges, payments, damages, claims, and demands whatsoever, in law or equity, for or concerning the said rent; PROVIDED, however, that these presents are upon the following express conditions and agreements — that is to say: First, that nothing herein contained shall in any manner or wise be construed, deemed, or taken to be a release or discharge of any covenant, condition, proviso, or agreement in the said in part recited indenture of grant contained, to be observed, performed, fulfilled, or kept by or on the part and behalf of the said grantees named in said indenture or counterpart, their heirs, executors, administrators, or assigns, excepting only the covenant for the payment of rent, and the claim of distress and agreement for re-entry, in consequence of the nonpayment thereof, but all and every other covenant, addition, proviso, and agreement therein contained on the part of the said grantees therein mentioned, shall be and continue in full force and effect as fully and amply as though this present indenture had never been made.

Secondly, that this indenture shall be null and void, if the representations hereinbefore recited, or any of them, be false, fraudulent, or untrue.

Thirdly, that nothing herein contained shall be construed, deemed, or taken to release or discharge the residue of the land described in the said grant from the payment of the rent due, and to grow due thereon, pursuant to said grant, less the part thereof apportioned upon the premises hereby released as hereinbefore mentioned.

IN WITNESS [*etc., as in Form 789*].

856. Deed of Surrender of a Term for Life or Years to the Reversioner.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part:

WHEREAS, by his will, bearing date the day of , , M. N. devised a life estate in the premises hereinafter described to the party of the first part, with a remainder over in fee to the party of the second part [*or, by a lease bearing date, etc., the said M. N. leased to O. P. the premises hereinafter described, of which lease the party of the first part has become the assignee, and the reversion of said premises has become vested in the party of the second part*]:

NOW, THIS INDENTURE WITNESSETH: That, in consideration of dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part has granted, bargained, sold, surrendered, and yielded up, and by these presents does grant, bargain, sell, surrender, and yield up unto the said party of the second part, his heirs and assigns forever, all [*here insert description of the premises, or refer to lease, etc., therefor*], and all the estate, right, title, interest, term, property, claim,

and demand whatsoever, of the party of the first part, of, in, to, or out of the same, or any part thereof:

TO HAVE AND TO HOLD the said lands and premises to the said party of the second part, his heirs and assigns, to his and their own proper use and behoof forever.

[Covenant against grantor's acts may be inserted.]

IN WITNESS [etc., as in Form 854].

857. Short Form of Surrender of Lease, to be Indorsed thereon.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., the lessee in [or, assignee of] the within lease, herchy, in consideration of one dollar, surrender and yield up the term thereby created to Y. Z., the lessor [or, the owner of the reversion].

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of _____, in the year one thousand nine hundred and _____.

Signed, sealed, and delivered in the presence of _____ A. B. [SEAL.]

[Signature of witness.]

858. Deed Creating a Joint Tenancy.

THIS INDENTURE, made the _____ day of _____, in the year one thousand nine hundred and _____, between A. B., of _____, in the county of _____, and state of _____, merchant [and C. B., his wife], of the first part, and W. X. and Y. Z., of _____, in the said county, merchants, of the second part,* WITNESSETH: That the said party [or, parties] of the first part, in consideration of the sum of _____ dollars to him [or, them] paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has [or, have] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does [or, do] grant, bargain, sell, alien, remise, release, convey, and confirm unto the said parties of the second part, and to their heirs and assigns, and the survivor of them, and the heirs and assigns of the survivor of them forever, all [here insert description]: TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest [dower or right of dower¹], property, possession, claim, and demand whatsoever, of the said party [or, parties] of the first part, both in law and in equity, of, in, and to the above-granted premises, with the hereditaments and appurtenances:

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said parties of the second part, their heirs and assigns forever, as joint tenants, and not as tenants in common. And the said A. B. does hereby covenant, promise, and agree, to and with the said parties of the second part, their heirs and assigns, in manner aforesaid, that [etc., as in other cases].

¹ Omit these words, unless a wife joins.

859. Deed Creating a Tenancy in Common.¹

[As in other common forms, except that the *habendum* will be:]

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof unto the said W. X. and Y. Z., their heirs and assigns forever, as tenants in common, and not as joint tenants.

860. Release of Part of Mortgaged Premises.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part:

WHEREAS, Y. Z., by a mortgage bearing date the day of , ' , for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the premises hereinafter described are part, unto A. B., aforesaid; which mortgage was recorded in the clerk's office of the county of , in liber , of mortgages, page , on the day of , ; and,

WHEREAS, the said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the premises hereinafter described, unto the said party of the second part, his heirs and assigns, and to hold and retain the residue of the mortgaged premises as security for the money remaining due on the said mortgage:

NOW THIS INDENTURE WITNESSETH: That the said party of the first part, in pursuance of the said agreement, and in consideration of one dollar to him paid, the receipt whereof is hereby acknowledged, has granted, remised, released, quitclaimed, and set over, and by these presents does grant, remise, release, quitclaim, and set over, unto the said party of the second part, his heirs and assigns, all that part of the said mortgaged premises [*here insert the description of the part released*]: TOGETHER with the hereditaments and appurtenances thereto belonging; and all the right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part, as heretofore:

TO HAVE AND TO HOLD the lands and premises hereby released and conveyed, to the said party of the second part, his heirs and assigns forever, free, clear, and discharged of and from all lien and claim, under and by virtue of the mortgage aforesaid.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Signed, sealed, and delivered in presence of

A. B. [SEAL.]

[*Signature of witness.*]

861. Deed of Right of Way, with Covenant by Grantee to Repair.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the

¹ This is the usual form, but in general a husband and wife) will create a tenancy in conveyance to two or more persons (except common, without such words as the above.

said county, farmer, of the second part, WITNESSETH: That in consideration of

dollars to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part, for himself, his heirs and assigns, covenants and grants with and to the said party of the second part, his heirs and assigns, that it shall be lawful for him, his heirs and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises now held by the said Y. Z., in _____, and known as the Z. meadow, and any other person or persons, for his and their benefit and advantage, at all times freely to pass and repass on foot, or with animals, vehicles, loads, or otherwise, through and over a certain road or way lately formed and fenced off by the said party of the first part, through the meadow adjoining the said Z. meadow upon the north, belonging to him, the said party of the first part, and which said road or way is of the width of _____ feet, or thereabouts, and leads from the said Z. meadow to the highway, opposite to the house of said party of the second part [which said way, the right whereof is hereby given, is more particularly described in a diagram indorsed on these presents]; and that it shall be lawful for the said party of the second part, his heirs and assigns, to make and lay causeways, or otherwise to repair said way as there shall be occasion.

AND the said party of the second part, for himself, his heirs and assigns, hereby covenants with the said party of the first part, his heirs and assigns, that he, the said party of the second part, his heirs and assigns, will, from time to time, and at all times hereafter, at his or their own costs and expense, repair and maintain, and keep repaired, in a proper, substantial, and workmanlike manner, the said road or way, the right of passing in and over which is hereby granted, and also the fence upon both sides thereof, and the gate erected by the said party of the first part across the said way, at the northern end thereof, and the fastening belonging thereto; and also that he, the said party of the second part, his heirs or assigns, and his and their agents and servants, and the tenants and occupants for the time being of the said meadow using the said way, will, at all times immediately after he or they shall have used and passed through the said gate, shut and fasten the same.

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of _____ [Signatures and seals.]

[Signature of witness.]

862. Right to Lay an Aqueduct.

The privilege of conveying water to said premises from a certain spring lying west of said premises, formerly owned by M. N., in an aqueduct to be taken from the spring or fountain, _____ inches below low-water mark [or, one inch lower than any privilege to be hereafter granted, for the conveying of water therefrom], such aqueduct to be _____ inch bore.

863. Deed of Water Power, Measured by Capacity of Flume.

[As in Form 858 to the *, continuing:]

WHEREAS, the said parties, at the time of the sealing and delivery of these presents, are respectively seized in fee of two contiguous pieces of land in _____,

upon the one of which belonging to the party of the first part there is a dam and water-course or flume belonging to him upon the stream:

NOW, THIS INDENTURE WITNESSETH: That the party of the first part, in consideration of the sum of dollars, to him paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, and sell to the said parties of the second part, their heirs and assigns, all the water of the said stream of water, which may or can be led and conveyed from the side of the said dam, in a race or flume, to be constructed by and at the expense of the parties of the second part, feet in width, and feet in depth, measuring from the surface of the embankment forming the said dam:

TO HAVE AND TO HOLD the said easement [*etc., continuing as in other form*].

864. Deed of a Pew, by the Proprietors of a Church.

KNOW ALL MEN BY THESE PRESENTS, that we, the proprietors of the Church, in , in consideration of dollars, to us paid by Y. Z., of , do hereby grant, bargain, sell, and convey unto the said Y. Z., his heirs and assigns, the pew in the church aforesaid, numbered :

TO HAVE AND TO HOLD the same, with the privileges and appurtenances, to the said Y. Z., his heirs and assigns forever: AND THE SAID PROPRIETORS hereby covenant with the said Y. Z., his heirs and assigns, that they are the lawful owners of the said pew, and have good right and authority to sell the same as aforesaid: PROVIDED, however, that this deed shall not be binding until recorded in the books of said church.

IN TESTIMONY WHEREOF, the said proprietors have caused these [SEAL.] presents to be signed by their treasurer, and their corporate seal to be hereunto affixed by their treasurer, this day of ,

ATTEST:

Treasurer.

Signed, sealed, and delivered in presence of

[Signatures.]

[Signature of witness.]

865. Deed by the Trustees of a Religious Corporation, Conveying a Pew, Subject to Assessments to be Laid.

KNOW ALL MEN BY THESE PRESENTS, that the trustees of the Society, of the town of , in the county of , and state of , in consideration of dollars to us paid by Y. Z., of said town, the receipt whereof is hereby acknowledged, do hereby sell and convey unto the said Y. Z., the pew No. , in the church of the said society:

TO HAVE AND TO HOLD the same unto the said Y. Z., his heirs and assigns [*or, where a pew is personal estate, his executors, administrators, and assigns*], forever; subject to all liabilities and incumbrances now legally existing, and to such taxes and assessments as may from time to time be laid thereon by said society; provided, however, that no alteration shall be made in said pew, nor shall the same be sold or transferred, by deed of sale, or mortgage, without the written consent of said society, or of its trustees for the time being; and further, that if, at any time, there shall be owing from said pew a sum equal to one year's taxes or assessments, this conveyance shall be wholly void, and all the right, title, and interest of the said Y. Z., his heirs

[or, executors, administrators], and assigns, in and to the said pew, shall revert to the said society.

IN WITNESS WHEREOF, we have hereunto set our hands, and the corporate seal of said society, this day of , .

| | |
|--|-------------------|
| Signed, sealed, and delivered in presence of | A. B., [SEAL.] |
| [Signature of witness.] | C. D., [SEAL.] |
| | E. F., [SEAL.] |
| | Trustees of, etc. |

866. Deed of a Pew by one Individual to Another.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of , in , in consideration of dollars to me paid by Y. Z., of , do hereby grant, bargain, sell, and convey unto the said Y. Z., his heirs and assigns, the pew in the Church, at , aforesaid, numbered :

TO HAVE AND TO HOLD the same, with the privileges and appurtenances, to the said Y. Z., his heirs and assigns forever.

And I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant and agree with the said Y. Z., his heirs and assigns, that I am lawfully seized in fee of the said pew; that I have good right to convey the same to the said Y. Z., as aforesaid; that the said pew is free from all incumbrances; and that I, my heirs, executors, and administrators, will warrant and defend the same to the said Y. Z., his heirs and assigns, against the lawful demands of all persons; subject, however, to the rights of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , in the year one thousand nine hundred and .

| | |
|--|---------------|
| Signed, sealed, and delivered in the presence of | A. B. [SEAL.] |
| [Signature of witness.] | |

867. Deed of Land to a Railroad Company for the Purposes of its Road.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between A. B. and C. D., his wife, of , in the county of , and state of , of the first part, and the Railroad Company, of the second part, WITNESSETH: That the said parties of the first part, for and in consideration of the sum of dollars to them paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to its successors and assigns forever, all [*here insert description of the premises*]. TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest [dower and right of dower], property, possession, claim, and demand whatsoever of the said party [*or, parties*] of the first part, both in law and in equity, of, in, and to the above-granted premises, with the hereditaments and appurtenances:

TO HAVE AND TO HOLD the above-granted premises, with the appurtenances, and every part thereof, unto the said party of the second part, its suc-

1 Omit these words, unless a wife joins.

cessors and assigns, to their own proper use and behoof forever, for the use and purpose of the party of the second part for track, and a roadway for said railroad, and the proper appendages to such track and roadway, and for no other use or purpose.

Provided always—and these presents are upon this express condition—that the said party of the second part shall construct its railroad and put it in operation within the time prescribed by the act incorporating the same [*or any other period agreed on*].

And it is understood that this conveyance is made for the purpose, and subject to the provisions of the act, entitled an act [*etc., referring to the charter*], and the acts amendatory thereof, the former passed the day of , , and for no other use or purpose whatsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of [*Signatures and seals.*]
[*Signature of witness.*]

868. Trust Deed.¹

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant [and C. B., his wife], of the first part, and Y. Z., of , in the said county, as trustee for , of the second part, WITNESSETH: That the said party [*or, parties*] of the first part, in consideration of the sum of dollars to him [*or, them*] paid by the said party of the second part, the receipt whereof is hereby acknowledged [*or state other consideration, as the case may be*], has [*or, have*] granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does [*or, do*] grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description*].

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, as trustee, as aforesaid, his successors and assigns forever, in fee, upon the trusts, nevertheless, and to and for the uses, interests, and purposes hereinafter limited, described, and declared—that is to say, upon trust to receive the issues, rents, and profits of the said premises, and apply the same to the use of M. N., during the term of his natural life, and, after the death of the said M. N., to convey the same by deed to O. P. in fee.

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of [*Signatures and seals.*]
[*Signature of witness.*]

869. Habendum of a Deed in Trust for a Married Woman.

TO HAVE AND TO HOLD all and singular the above-described premises, with the appurtenances, unto the said party of the second part, his successors and assigns forever; IN TRUST for the sole and separate use, benefit, and behoof of the said C. B., wife of the said A. B., her heirs and assigns forever, free from the control, disposal, debts, and liabilities of her said husband; and

¹ For assignments in trust, see chapter on ASSIGNMENTS. For trust mortgages, see chapter on MORTGAGES.

to permit her, the said C. B., to take, collect, and receive the rents, issues, and profits thereof [or, and to take, collect, and receive the rents, issues and profits thereof, and apply the same] to and for her sole and separate use, free as aforesaid, with full and absolute power to the said C. B., of incumbering, alienating, or disposing of said premises, or any part thereof, and the rents, issues, and profits thereof, as if she were sole, so far as she may by the laws of said state.

870. Deed Conveying in Trust for Support of Grantor's Parents, with Power of Appointment to Them, and a Reservation of Rents for Payment of Incumbrances.

THIS INDENTURE, tripartite, made this day of , in the year one thousand nine hundred and , between A. B., of the city of , merchant, party of the first part, and Y. Z., drygoods dealer, also of the said city, party of the second part, and C. B., of said city, wife of S. B., of said city, party of the third part:

WHEREAS, the said A. B. is desirous of making a provision and settlement for the benefit of his father, mother, and sisters, by a conveyance in trust of the property hereinafter mentioned, subject, however, to the reservations herein provided, and to the trusts and powers herein contained:

NOW, THIS INDENTURE WITNESSETH: That the said party of the first part, for and in consideration of the sum of dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his successors and assigns forever, all [*here insert description of the premises*].

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever of the said party of the first part, both at law and in equity, of, in, and to the above-granted premises, with the hereditaments and appurtenances:

TO HAVE AND TO HOLD all and singular the above-granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever. [*If there is any incumbrance, add, subject to, etc., specifying it.*] IT IS, HOWEVER, to be taken and understood as part of this indenture, and as limiting and controlling the grant hereby made to the party hereto of the second part, that the party hereto of the first part hereby retains and reserves the possession, use, occupation, rents, issues, and profits of the premises hereby conveyed, for the purpose of paying, and until the mortgage liens now existing upon the said premises shall be paid off or discharged, such retaining and reservation of the possession, use, occupation, rents, issues, and profits, not, however, to extend beyond the day of one thousand eight hundred and , but to terminate sooner if the aforesaid mortgage liens shall be sooner paid off or discharged, or if both S. B. and C. B., the father and mother of the party hereto of the first part, shall sooner depart this life; IN TRUST, nevertheless, subject to the reservation aforesaid, that the said party of the second part, his heirs, successors, and assigns, shall manage said property hereby conveyed, and shall apply the net income and profits,

(after deducting for repairs, taxes, assessments, and insurance), which shall, from time to time, be realized from the premises hereby conveyed, to the sole and separate use of the said C. B., during her natural life, free and discharged from any rights or claims of or against her husband; the separate receipt or settlement of the said C. B. therefor to be a full and complete discharge of the said party of the second part; secondly, in trust from the death of the said C. B., to apply the said net income and profits as they shall from time to time arise, to the sole use of the said S. B., and for the support of himself and family during his life. It is further understood and to be taken as part of this conveyance, that the property and premises hereby conveyed at the death of the said S. B. and C. B. shall vest in the children of the said S. B., or in a trustee or trustees for their benefit, in such shares and proportions, and in such estates as the said S. B. shall, by a conveyance or last will and testament, order and appoint. It being further understood and to be taken as part of this indenture, that the said S. B. shall have the power of ordering and appointing, or distributing among, or in trust for his children, the fee simple of said property, or less estate therein, either by a conveyance or by a last will and testament, subject to the aforesaid reservation and life interest, and in such shares and proportions, and in such manner as he shall therein designate and direct, provided, however, that at least one-fourth part thereof shall be appointed to the use of the party hereto of the first part. It being the intent and meaning hereof to clothe the said S. B. with all the power and authority over three-fourths of said estate or property, in distributing the same among his children, subject to said reservation and life interests, as the party of the first part would have had, had not this indenture been executed. And it is further understood and to be taken as part of this conveyance, that if the power of appointment and distribution aforesaid shall not be exercised by the said S. B. during his lifetime, that the same may be exercised by the said C. B., who, upon the death of the said S. B., without having by a conveyance or last will and testament, exercised the power and authority hereby granted, shall have the same power and authority. And the said party hereto of the second part is hereby authorized and directed to convey the property and premises herein and hereby conveyed in pursuance and upon the terms of the order and appointment of the said S. B. or C. B., legally made under the provisions of this indenture.

THIS INDENTURE FURTHER WITNESSETH: That the said party of the first part, for and in consideration of the sum of ten dollars to him in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, and the said party of the third part forever discharged therefrom, hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth, for himself, his heirs and assigns, grant, bargain, sell, assign, transfer, and set over unto the said party of the third part, her heirs and assigns, all the estate, premises, and property hereinbefore described and intended to be conveyed, if any, which are not legally vested in or conveyed to the said party of the second part, his heirs and assigns, by virtue of the execution of this indenture, for the uses and purposes hereinbefore mentioned, or which cannot be claimed by the beneficiaries under or through the trusts or persons, or the execution thereof herein and hereunder intended to be legally created, authorized, and executed, reserving and retaining, however, to the said party of the first part the use, possession, occupation, rents, issues, and profits of

the said property and premises for the period hereinbefore reserved and retained.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of [Signatures and seals.]
[Signature of witnesses.]

VI. STATUTORY PROVISIONS AND FORMS, AND FORMS IN COMMON USE IN THE SEVERAL STATES.

ALABAMA.

Conveyances for alienation of lands must be written or printed, or partly written and partly printed, on parchment or paper, and signed at foot by contracting party, or agent having written authority; or, if he is not able to sign name, it may be written for him, with words, "his mark," written against same, or over it. Code of 1907, § 3355.

Any instrument in writing signed by grantor, or agent having written authority, is effectual to transfer legal title to grantee, if such was intention of grantor, to be collected from entire instrument. *Ibid.*, § 3355.

Conveyances of property, required by law to be recorded, must be recorded in office of judge of probate. *Ibid.*, § 3367.

Conveyance is operative as a record from day of delivery to judge. *Ibid.*, § 3369.

Conveyances of real property must be recorded in county where property situated. *Ibid.*, § 3372.

Recording in proper office of conveyance of property which may be legally admitted to record, operates as notice of contents of conveyance. *Ibid.*, § 3373.

All deeds of assignment executed by debtors for benefit of creditors shall, as soon as executed, be filed and recorded in office of judge of probate of county where property situated, and such deeds are operative in all respects as other deeds from day of delivery to judge. *Ibid.*, § 3381.

All conveyances of real property are inoperative and void, as to purchasers for valuable consideration, mortgagees, and judgment creditors, without notice, unless recorded before accrual of right of such purchasers, mortgagees, or judgment creditors. *Ibid.*, § 3383.

Preceding section includes absolute conveyances of real property defeasible by defeasance or other instrument, in which case defeasance or instrument must be recorded, according to its character, within time limited in preceding section, or it is void as to purchasers for valuable consideration, mortgagees and judgment creditors of original grantee without notice. *Ibid.*, § 3384.

All conveyances, creating estates in land in remainder or reversion, or upon a condition, after estate for life or lives, are inoperative and void against creditors of tenant for life or lives in possession, after possession of five years by tenant, unless conveyance be recorded within five years from entry and possession of tenant. *Ibid.*, § 3385.

Every estate in lands is to be taken as fee simple, although words necessary to create estate of inheritance not used, unless it clearly appears a less estate was intended. *Ibid.*, § 3396.

Conveyance made by tenant for life or years, purporting to convey greater interest than he possesses, or can lawfully convey, does not work forfeiture of his estate, but passes to grantee all the estate which tenant could lawfully convey. *Ibid.*, § 3405.

In all conveyances of estates in fee, the words, "grant," "bargain," "sell," or either of them, must be construed, unless it otherwise expressly appears from conveyance, as an express covenant to grantee, his heirs and assigns, that grantor was seized of indefeasible estate in fee simple, free from incumbrances done or suffered by grantor, except the rents and ser-

vices that are reserved; and also for quiet enjoyment against grantor, heirs and assigns, unless limited by the express words of such conveyance; and grantee, heirs, personal representatives, and assigns may, in any action, assign breaches, as if such covenants were expressly inserted. *Ibid.*, § 3421.

In all cases of written agreements, or contracts for conveyance of lands in state, where person executing same dies before execution of conveyance, personal representative of such person may execute conveyance according to forms prescribed by law for conveyance of real estate, to person to whom agreement or contract made, heirs, or assigns. *Ibid.*, § 3441.

If personal representative refuses to execute conveyance in case provided in preceding section, he may be compelled so to do, by application to judge of probate of county in which letters testamentary or of administration granted. *Ibid.*, § 3442.

Such application must be by petition, setting out contract or agreement and lands to be conveyed, and stating names of heirs and personal representatives of contracting party, which of them are of full age and which are minors; and judge of probate must give notice of petition by twenty days' written notice to personal representative and resident heirs of contracting party, to be served by any sheriff and if any one or more are nonresidents, by publication in newspaper published in his county, and county in which lands lie; or if none is published therein, paper published in place nearest to county site of such county, once a week for three successive weeks; and if, on the hearing of application, it appears such agreement or contract was fairly made, and consideration or conditions of same paid or performed, judge must decree conveyance to be executed by personal representative of party so contracting, according to terms thereof; and personal representative, failing to execute conveyance in conformity with decree, must be imprisoned until he executes same; either party having right to appeal. *Ibid.*, § 3443.

In cases in which minor heirs are interested in application, notice must be given to guardian, or, if no guardian, judge must appoint guardian ad litem. *Ibid.*, § 3444.

871. Warranty Deed.

THE STATE OF ALABAMA, }
County. }

KNOW ALL MEN BY THESE PRESENTS, that I, _____, for and in consideration of _____ dollars, to _____ paid in hand by _____, the receipt whereof is hereby acknowledged, do grant, bargain, sell, and convey unto the said _____, the following described property, to wit: [*description*] situated, lying and being in the county of _____ and state of Alabama.

TO HAVE AND TO HOLD the same unto the said _____, heirs and assigns, forever. And _____ do for _____ and _____ heirs, executors, and administrators, covenant with the said _____, heirs and assigns, that lawfully seized in fee simple of said premises; that they are free from all incumbrances; that _____ ha a good right to sell and convey the said property; that _____ will, and _____ heirs, executors, and administrators shall, warrant and defend the same to said _____, heirs, executors, and assigns, forever, against the lawful claims of all persons whatsoever.

Given under _____ hand and seal, this _____ day of _____, A. D., 19 _____.

Attest:

[*Signature.*]

ALASKA.

Conveyance of lands may be made by deed, signed by person from whom estate is to pass, or agent or attorney, and recorded. Civil Code of 1900, § 73.

Deed of quitclaim and release, of form in common use, is sufficient to pass all real estate grantor could lawfully convey by deed of bargain and sale. *Ibid.*, § 75.

Term "heirs," or other words of inheritance, are not necessary to create or convey estate in fee simple; and any conveyance of real estate shall pass all real estate of grantor, unless intent to pass a less estate shall appear by express terms, or be necessarily implied in terms of grant. *Ibid.*, § 76.

Conveyance by tenant for life or years, purporting to grant greater estate than he possessed or could lawfully convey, does not work forfeiture of his estate, but passes to grantee all estate tenant could lawfully convey. *Ibid.*, § 77.

No covenant shall be implied in conveyance of real estate, whether conveyance contain special covenants or not. *Ibid.*, § 78.

No grant or conveyance of land is void for reason that at time of execution thereof lands were in actual possession of another claiming adversely. *Ibid.*, § 80.

Conveyance of real property which shall not be filed for record in the recording district or precinct in which the lands lie shall be void against subsequent innocent purchaser in good faith for valuable consideration, whose conveyance shall be first duly recorded. *Ibid.*, §§ 98, 94, 95.

When deed purports to be absolute conveyance in terms, but is made or intended to be made defeasible by force of deed of defeasance, or other instrument for that purpose, original conveyance shall not be defeated or affected against any person other than maker of defeasance, heirs or devisees, or persons having actual notice, unless instrument of defeasance recorded in office of commissioner for precinct where lands lie. *Ibid.*, § 100.

Letter of attorney or other instrument, containing power to convey lands as agent or attorney for owner, and every executory contract for sale or purchase of lands, may be recorded in commissioner's office of any precinct in which lands to which such power relates are situated. *Ibid.*, § 106.

No letter of attorney, or other instrument so recorded, shall be deemed revoked by any act of party by whom executed unless instrument containing revocation be also recorded in same office. *Ibid.*, § 107.

ARIZONA.

No estate of inheritance or freehold or for term of more than one year, in lands and tenements, shall be conveyed unless conveyance declared by instrument in writing, subscribed and delivered by party disposing of same, or agent authorized by writing. *Rev. Stat., Civil Code of 1901, Par. 721.*

Alienations of real estate, made by any person purporting to pass or assure greater right or estate than he may lawfully pass or assure, shall operate as alienations of so much of right and estate therein as he might lawfully convey; but shall not pass or bar residue of right or estate purporting to be conveyed or assured; nor shall alienation of any particular estate on which remainder may depend, whether alienation by deed or will, nor shall union of particular estate with inheritance by purchase or descent, so operate as to defeat, impair or in any wise affect remainder. *Ibid.*, *Par. 722.*

Estate in lands granted or conveyed to one, although other words heretofore necessary at common law to transfer estate in fee simple be not added, shall be deemed fee simple, if less estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law. *Ibid.*, *Par. 723.*

No person shall be obliged to insert covenant of warranty, or be restrained from inserting in conveyances any clause or clauses deemed proper and advisable by purchaser and seller, and forms not contravening laws of land shall not be invalidated. *Ibid.*, *Par. 724.*

Deed or conveyance of real estate must be signed by grantor. *Ibid.*, *Par. 725.*

Estate of freehold or inheritance may be made, to commence in future, by deed or conveyance, in like manner as by will. *Ibid.*, *Par. 727.*

From use of word "grant" or "convey" in conveyance by which estate of inheritance or fee simple is to be passed, following covenants, and none other, on part of grantor for himself and heirs to grantee, heirs and assigns, are implied, unless restrained by express terms contained in conveyance.

1. That previous to time of execution of conveyance grantor has not conveyed same estate or right, title or interest therein, to person other than grantee.

2. That estate is at time of execution of conveyance free from incumbrances.

3. Such covenants may be sued upon in same manner as if expressly inserted in conveyance. *Ibid.*, Par. 728.

Term "incumbrances" includes taxes, assessments and all liens upon real property. *Ibid.*, Par. 729.

The following or other equivalent forms varied to suit circumstances, are sufficient for the purposes therein contemplated:

872. Statutory Form of Quitclaim Deed.

Quitclaim.] 1. For the consideration of dollars, I hereby quitclaim to all my interest in the following tract of real estate [*describing it*].

873. Statutory Form of Deed.

Conveyance.] 2. For the consideration of dollars, I hereby convey to A. B. the following tract of real estate [*describing it*].

874. Statutory Form of Warranty Deed.

Warranty Deed.] 3. The same as the last preceding form, adding the words "and I warrant the title against all persons whomsoever" [*or other words of warranty, as the party may desire*].

875. Statutory Form of Mortgage.

4. The same as deed of conveyance, adding the following: "To be void upon condition that I pay," etc.

Ibid., Par. 734.

No instrument affecting real estate is of any validity against subsequent purchasers for valuable consideration, without notice, unless recorded in office of recorder of county in which same lies, as provided by law. *Ibid.*, Par. 735.

Such instrument of writing shall be considered recorded from time it is deposited for record. *Ibid.*, § 736.

All bargains, sales and other conveyances, of lands, tenements and hereditaments, whether made for passing estate of freehold or inheritance or for term of years, shall be void as to all creditors and subsequent purchasers for valuable consideration without notice, unless filed with recorder to be recorded, as required by law, or where record is not required deposited and filed with recorder; but same, as between parties and their heirs, and subsequent purchasers, with notice, or without valuable consideration, shall be valid and binding. *Ibid.*, § 749.

876. Warranty Deed.

STATE OF ARIZONA, }
 County of , } ss.

KNOW ALL MEN BY THESE PRESENTS, that I , of the [give name of city, town, or county], in the territory aforesaid, for and in consideration of dollars, to me in hand paid by , have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said , of the [give name of city, town, or county], in the state of , all that certain [describe premises]. TO HAVE AND TO HOLD the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said , his heirs and assigns forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said , his heirs and assigns, against every person whatsoever, lawfully claiming or to claim the same, or any part thereof.

WITNESS my hand, this day of , .

Signed and delivered in presence of

876a. Trust Deed.

THIS DEED, made and entered into this day of , nineteen hundred , by and between , of the , and state of Kentucky, part of the first part, and the and Trust Co., of , Kentucky, party of the second part,

WITNESSETH, that said first part , in consideration of the sum of one (\$1.00) dollar, the receipt of which is hereby acknowledged, and the further consideration hereinafter set forth, ha granted, bargained, and sold, and hereby convey to said second party, and to its successors and assigns, all interest in certain lot or parcel of land in , Kentucky, with the appurtenances thereto, the improvements thereon, and the rents, issues and profits thereof, and bounded and described as follows, to wit: [description]

TO HAVE AND TO HOLD the same to said second party, its successors and assigns forever, with covenant of general warranty. And the said part covenant with said second party, its successors and assigns, that seized of a good and sure title in fee simple to the premises herein conveyed, and that the same are free from all encumbrances and liens.

PROVIDED, that this deed is made on the following conditions and for the purposes herein set forth, viz.:

1. WHEREAS, said ha borrowed of the and Trust Co., the sum of dollars, for which ha executed coupon bonds of even date herewith, numbered one to inclusive, , and due in years from date, payable to the and Trust Co., trustee, or bearer, at their office in Kentucky, with interest thereon at the rate of per centum per annum, payable semi-annually at the bank aforesaid, and with per centum per annum interest after due if not then paid; and for which said semi-annual interest coupons for signed by said are attached to said bonds. Each of said bonds bears the following indorsement: "This is one of the bonds mentioned in and secured by the within named mortgage," which indorsement is signed by the and Trust Co.

2. Said first part agree to keep the improvements on said mortgaged premises insured in some insurance company or companies, to be approved

by said second party, to the amount of dollars, at all times until said debt shall be fully paid, and to cause the policies therefor to be properly assigned or made payable to said second party or to the holder of said bonds as collateral security for the payment of the debt hereby secured, and in case of loss, to be applied to such payment.

3. Said first part further agree to keep all taxes and assessments against said mortgaged premises paid, and that the same shall be kept free from liability therefor; and in default of such payment of taxes or assessments, or failure to cause such insurance to be made, the said second party, or the holder of any of said bonds, may cause such payments to be made and insurance to be had, and shall have the right to collect the same from said first part, heirs or assigns, with per centum per annum interest thereon until paid, and this mortgage shall extend to and include all such sums so paid for such insurance, taxes or assessments.

4. It is further agreed that if any interest coupon secured by this mortgage shall remain unpaid for more than thirty days after the same shall become due, and payment thereof shall have been demanded at the place of payment designated therein; or if the first part at any time after notice or demand thereto by the second party, or by the holder of any of the above mentioned bonds, shall fail to insure the mortgaged premises, or to repay to said second party or to any such bondholder, any money advanced for obtaining such insurance as herein above provided for, or if the first part shall for more than three months after demand thereto by the second party, or by any bondholder, fail to pay any taxes or assessments levied or imposed by law upon the said mortgaged premises, then and in either of said events, the entire debt secured by this mortgage shall become and be immediately due and payable, and the holder of any bond secured hereby may proceed to collect the same by law as if such bond had matured according to its terms, and may proceed by suit to enforce the lien of this mortgage and obtain a sale of the mortgaged premises for the payment of the entire mortgage debt with interest thereon. When the mortgage debt shall have become due, any bondholder may call upon and require the second party to bring suit for the foreclosure of the lien of this mortgage for the payment of the mortgage debt, having first, however, given to the second party satisfactory indemnity against reasonable attorney's fees and costs of litigation.

Now, should said well and truly pay, or cause to be paid, the above mentioned principal sum of dollars, with interest thereon, as the same shall become due and payable, and well and truly do and perform all the covenants and obligations as herein set forth, then this conveyance shall be null and void, otherwise remain in full force and virtue.

And the said second party also assigns this deed and accepts the trusts imposed thereby, and any party having equity under this deed may, in his own name and right, cause proceedings to be made to enforce the same. When the terms of this mortgage shall have been fully complied with, the party of the second part shall, at the cost of the said first part, release the lien thereof. The production of the bonds to the second party by the mortgagor shall be sufficient evidence to require such release of lien.

IN WITNESS WHEREOF, the parties of the first and second parts have hereto set their hands, the day and year first herein written. [Signatures.]

877. Quitclaim Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , the part of the first part, and , the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, ha remised, released and quitclaimed, and by these presents do convey, remise, release and quitclaim, unto the said part of the second part, and to heirs and assigns forever, all the right, title, interest, claim and demand which the said part of the first part ha in and to the following described real estate and property situated in the county of , and state of Arizona, to wit: [*description*]

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest and claim whatsoever, of the said part of the first part, either in law or equity, in possession or expectancy, to the only proper use, benefit and behoof of the said part of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

Signed and delivered in the presence of

[*Signatures and seals.*]

[*Signatures.*]

877a. Mining Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , the part of the first part, and , the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim, unto the said part of the second part, and to heirs and assigns [*description*].

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in

law as in equity, of the said part of the first part, of, in or to the said premises, and every part and parcel thereto, with the appurtenances.

To HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereunto incident, unto the said part of the second part .

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand the day and year first above written.

[Signatures.]

Signed and delivered in the presence of

[Signatures.]

877b. Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS, that , of the county of and state of Arizona, held and firmly bound unto of , in the penal sum of dollars, to be paid unto the said , heirs, executors, administrators or assigns, to which payment, well and truly to be made, bind , heirs, executors, administrators, and every of them, firmly by these presents.

SEALED with seal , and dated the day of , A. D. 19 .

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that, whereas, the above bounden ha this day sold to the said , heirs and assigns, for the sum of dollars, all the following described lot ; piece or parcel of land, to wit: [*description*], which sum of dollars is to be paid in the manner following: , with interest at the rate of per cent. per annum, payable annually on the whole sum remaining from time to time unpaid.

Upon the payment of the said sums being made at the time and in the manner aforesaid, and of all taxes, assessments or impositions that may be legally levied or imposed upon said land subsequent to , A. D. 19 , the said , heirs, executors and assigns, covenant and agree to and with the said , heirs, executors, administrators and assigns, to execute a good and sufficient deed of conveyance in fee simple, free from all incumbrance, with full covenants of warranty for the above described premises.

Now, if the said shall fail to well and truly keep and perform covenants and agreements herein contained on part, to be kept and performed, then this obligation to be void; otherwise to remain in full force and virtue. It is expressly understood and agreed by and between the parties hereto, that time is of the essence of this contract, and, in the event of non-payment of said sum of money, or any part thereof, or the interest thereon, at the time or times herein named for its payment, that then the said be absolutely discharged at law and in equity from any and all liability to make and execute such deed.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

ARKANSAS.

In a deed words "grant, bargain and sell," shall be express covenant to grantee, heirs and assigns, that grantor is seized of indefeasible estate in fee simple, free from incumbrances done or suffered from grantor, except rents or services expressly reserved by deed, as also for quiet enjoyment against grantor, heirs and assigns, and from claim or demand of all other persons whatsoever, unless limited by express words in such deed. Digest of Statutes of 1904, § 731.

Grantee, heirs or assigns, may in any action assign breaches as if covenants expressly inserted. *Ibid.*, § 732.

Term or word "heirs," or other words of inheritance, shall not be necessary to create or convey estate in fee simple; but all deeds shall be construed to convey complete estate of inheritance in fee simple, unless expressly limited by appropriate words in such deed. *Ibid.*, § 733.

If person convey real estate by deed, purporting to convey same in fee simple absolute, or any less estate, and shall not at time of conveyance have legal estate in such lands, but shall afterward acquire same, the legal or equitable estate afterward acquired shall immediately pass to grantee, and such conveyance shall be as valid as if legal or equitable estate had been in grantor at time of conveyance. *Ibid.*, § 734.

Person claiming title to real estate may, notwithstanding adverse possession, sell and convey his interest in same manner and with like effect as if in actual possession. *Ibid.*, § 736.

Term "real estate," as used in this act, shall be construed to mean "lands, tenements and hereditaments," and to embrace all chattels real. *Ibid.*, § 737.

Letter of attorney containing power to convey real estate as agent or attorney for owner, or execute as agent or attorney deed or instrument in writing that shall convey real estate, or whereby real estate shall be affected in law or equity shall be recorded with any deed such agent or attorney shall make in virtue of such letter of attorney. *Ibid.*, § 753.

No letter of attorney shall be revoked but by maker of same or his legal representatives, which revocation shall be in writing, filed for record in county or counties where letter of attorney was intended to operate—all such letters of attorney shall be revoked and deemed void from time of filing such revocations of record. *Ibid.*, § 755.

Deed or instrument in writing conveying or affecting real estate may be recorded by recorder of county where land to be conveyed or affected is situate, and when so recorded may be read in evidence without further proof of execution. *Ibid.*, § 756.

Deed, bond or instrument of writing affecting title in law or equity to property, real or personal, within state, required by law to be recorded, shall be constructive notice to all persons from time filed for record in office of recorder of proper county. *Ibid.*, § 762.

No deed, bond or instrument of writing, for conveyance of real estate, or by which title thereto may be affected in law or equity, shall be valid against subsequent purchaser for valuable consideration, without notice, or against creditor of person executing same, obtaining judgment or decree, which by law may be lien upon such real estate, unless filed for record in office of the clerk and ex officio recorder of county where real estate situated. *Ibid.*, § 763.

878. Warranty Deed With Relinquishment of Dower.

KNOW ALL MEN BY THESE PRESENTS, that we, _____, and _____, his wife, for and in consideration of the sum of _____ dollars, _____, do hereby grant, bargain, sell and convey unto the said _____, and unto _____ heirs and assigns forever, the following lands lying in the county of _____, and state of Arkansas, to wit: [description]

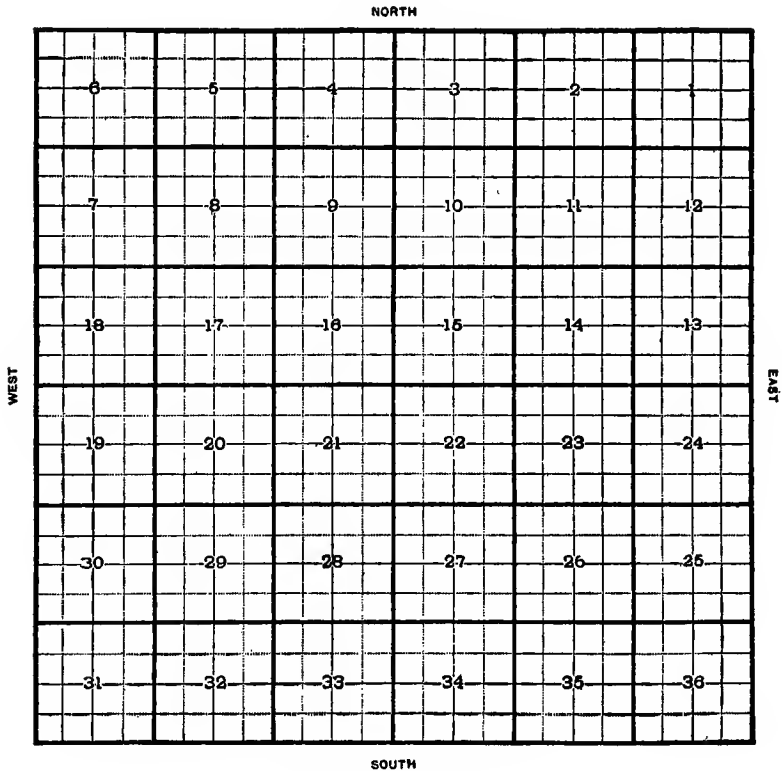
To HAVE AND TO HOLD the same unto the said _____, and unto _____ heirs and assigns forever, with all appurtenances thereunto belonging.

And _____ hereby covenant with said _____, that _____ will forever warrant and defend the title to the said lands against all claims whatever.

And I, _____, wife of the said _____, for and in consideration of the said sum of money, do hereby release and relinquish unto the said _____, all my right of dower and homestead in and to the said lands.

WITNESS our hands and seals on this _____ day of _____, 19 ____ .
 [Signatures and seals.]

Township No. _____, Range No. _____
 County, Arkansas.



879. Timber Deed.

THIS INDENTURE, made this _____ day of _____, A. D. 19 ____, by and between _____, party of the first part, unto and with the _____, party of the second part,

WITNESSETH, that said party of the first part being the owners, in fee simple, and in possession of the following lands, lying and being situated in

county, Arkansas, to wit: [description]. For and in consideration of the sum of dollars (\$), to him in cash paid, the receipt of which is hereby acknowledged, has this day granted, sold and conveyed unto the said party of the second part and its lawful successors and assigns forever, all the timber over twelve inches in diameter on said lands, and enough of the smaller timber for skid poles, in removing said timber from the land.

IT IS AGREED, that said party of the first part shall pay all taxes and assessments levied against said lands and keep the same free from all alienation and encumbrance, except such as may be subordinate and subject to this indenture; and that any failure by said first party to pay taxes and assessments by the third day before the time for the payment of the same shall expire, shall be construed to be an authority to the party of the second part to pay the same, for which a lien on said land may be declared as now by law given to agents and others paying taxes on lands of others at their request.

The party of the second part shall cut and remove said timber as expeditiously as possible, and it is agreed that unless it shall have removed all the same within a period of years from the date hereof, that it shall be responsible for and pay to the first party the full amount of taxes assessed against said lands after the expiration of said period of years from this date until such time as said timber is removed and said possession returned to said first party. The said second party shall have free and uninterrupted possession of said land during the term of this indenture for the purpose herein set forth, and shall have free ingress and egress thereto and therefrom, with the right to build and operate tram or railroad on, to or across said land for the purpose of transporting the timber therefrom, or for transportation of timber belonging to or that may belong to said second party, and to this end shall be regarded as the holder of said land, to sue for and recover the same from all persons whatever, holding or attempting to hold the same; provided, that the said party, heirs or legal assigns may retain such possession of said land, at all times, as shall not interfere with the rights of the second party under this deed for the purpose aforesaid.

IT IS FURTHER AGREED, that said second party shall not have the right to enter any field on said land that is fenced or inclosed at date hereof, without first obtaining the consent of the party of the first part.

IT IS FURTHER AGREED, that whenever said timber shall have been removed, the party of the first part shall enter full possession of said land at once, whether the time for such removal be expired or not; provided that all right of railroad herein granted shall be perpetual; said right of way not to be less than fifty feet wide, and may be used for a regular freight and passenger railroad.

And the said party of the first part does hereby covenant with the second party and its lawful assigns and successors that he will forever warrant and defend the title of said timber, and right of way, against all lawful claims whatsoever.

And I, , wife of , aforesaid, for, and on my own behalf, do hereby freely and fully, for the purpose mentioned in this indenture, unite

with my husband in making the same, and do forever relinquish and quit-claim unto the said _____, its successors and _____ assigns, all my right of and claim to dower in said land; that is to say, until the expiration of rights herein conveyed.

IN TESTIMONY WHEREOF, the said part _____ of the first part ha hereunto set _____ name _____, the day and year above written.

[Signatures.]

CALIFORNIA.

Right of re-entry, or of repossession for breach of condition subsequent, can be transferred. Civil Code of 1909, § 1046.

Person claiming title to real property in adverse possession may transfer it with same effect as if in possession. *Ibid.*, § 1047.

A grant cannot be delivered to grantee conditionally. Delivery to him, or agent as such, is necessarily absolute. *Ibid.*, § 1056.

Though grant not actually delivered into possession of grantee, it is constructively delivered where instrument is, by agreement of parties, understood to be delivered, and under such circumstances that grantee entitled to immediate delivery, or where it is delivered to stranger for benefit of grantee, and his assent is shown, or may be presumed. *Ibid.*, § 1059.

Words of inheritance or succession are not requisite to transfer fee in real property. *Ibid.*, § 1072.

Estate in real property, other than estate at will or for term not exceeding one year, can be transferred only by operation of law, or by instrument in writing, subscribed by party disposing of same, or agent authorized by writing. *Ibid.*, § 1091.

A grant of an estate in real property may be made in substance as follows:

880. Deed, Statutory Form.

I, A B, grant to C D, all that real property situated in [insert name of county] county, state of California, bounded [or, described] as follows: [here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, "The Norris Ranch"].

WITNESS my hand, this [insert day] day of [insert month], 19 ____ . "A. B."
Ibid., § 1092.

When attorney in fact executes instrument, transferring estate in real property, he must subscribe name of principal to it, and his own name as attorney in fact. *Ibid.*, § 1095.

A fee-simple title passes by grant of real property, unless it appears from grant a lesser estate intended. *Ibid.*, § 1105.

Where person purports by proper instrument to grant real property in fee-simple, and subsequently acquires title or claim of title thereto same passes by operation of law to grantee or successors. *Ibid.*, § 1106.

Grant of estate in real property is conclusive against grantor, also against every one subsequently claiming under him, except purchaser or encumbrancer who in good faith and for valuable consideration acquires title or lien by instrument that is first duly recorded. *Ibid.*, § 1107.

Grant by owner of estate for life or years, purporting to transfer greater estate than he could lawfully transfer, does not work forfeiture of his estate, but passes to grantee all estate which grantor could lawfully convey. *Ibid.*, § 1108.

From use of word "grant" in conveyance by which estate of inheritance or fee simple is to be passed, following covenants, and none other, on part of

grantor for himself and heirs to grantee, heirs, and assigns, are implied, unless restrained by express terms contained in conveyance:

1. That previous to time of execution of conveyance, grantor has not conveyed same estate, or any right, title, or interest therein, to any person other than grantor;

2. That such estate is at time of execution of conveyance free from encumbrances done, made, or suffered by grantor, or any person claiming under him.

Such covenants may be sued upon in same manner as if expressly inserted in conveyance. *Ibid.*, § 1113.

Instruments entitled to be recorded must be recorded by county recorder of county in which real property affected thereby is situated. *Ibid.*, § 1169.

Instrument is deemed recorded when deposited in recorder's office, with proper officer, for record. *Ibid.*, § 1170.

Conveyance of real property, recorded as prescribed by law, from time it is filed with recorder for record is constructive notice of contents thereof to subsequent purchasers and mortgagees; and certified copy of such recorded conveyance may be recorded in any other county and when so recorded the record thereof shall have same force and effect as though it was of original conveyance and where such original conveyance has been recorded in county wherein property therein mentioned is not situated a certified copy of such recorded conveyance may be recorded in county where such property is situated, with same force and effect as if original conveyance had been recorded in such county. *Ibid.*, § 1213.

Conveyance of real property, other than lease for term not exceeding one year, is void against subsequent purchaser or mortgagee of property, or part thereof, in good faith and for valuable consideration, whose conveyance is first duly recorded, and against any judgment affecting the title, unless duly recorded prior to record of notice of action. *Ibid.*, § 1214.

No instrument containing power to convey or execute instrument affecting real property, which has been recorded, is revoked by any act of party by whom executed, unless instrument containing such revocation is also recorded in same office. *Ibid.*, § 1216.

Certified copy of instrument affecting title to real property once recorded may be recorded in any other county, and, when so recorded, record thereof has same force and effect as though it was of original instrument. *Ibid.*, § 1218.

Agreement on part of seller of real property to give usual covenants, binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against encumbrances." *Ibid.*, § 1733.

Covenants mentioned in last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee-simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part, and all persons acquiring any interest in the same, through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part, all the said property against every person lawfully claiming the same." *Ibid.*, § 1734.

The only covenants which run with the land are those specified in this title (on Transfer of Obligations, §§ 1457-1468), and those which are incidental thereto. *Ibid.*, § 1461.

Covenant in grant of estate in real property, which is made for direct benefit of property, or some part of it then in existence, runs with the land. *Ibid.*, § 1462.

Last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on part of grantor, and covenants for payment of rent, or taxes or assessments upon land, on part of grantee. *Ibid.*, § 1463.

Covenant for addition of some new thing to real property, or for direct benefit of some part of property not then in existence or annexed thereto, when contained in grant of estate in such property, and made by covenantor expressly for his assigns, or to the assigns of covenantee, runs with land so far only as assigns thus mentioned are concerned. *Ibid.*, § 1464.

Covenant running with land binds those only who acquire whole estate of covenantor in some part of property. *Ibid.*, § 1465.

881. Warranty Deed.

THIS INDENTURE, made the day of , one thousand nine hundred and , between , the part of the first part, and , the part of the second part,

WITNESSETH, that the part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid, by the part of the second part, the receipt whereof is hereby acknowledged, do by these presents grant and convey unto the part of the second part, and to heirs and assigns forever: [*description*]

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the part of the second part, and to heirs and assigns forever. And the part of the first part, and heirs, the said premises in the quiet and peaceable possession of the part of the second part, heirs and assigns, against the part of the first part, and heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

IN WITNESS WHEREOF, the part of the first part ha hereunto set hand the day and year first above written.

[*Signatures.*]

Signed and delivered in the presence of

[*Signatures.*]

882. Quitclaim Deed.

THIS INDENTURE, made the day of , one thousand nine hundred and , between , the part of the first part, and , the part of the second part,

WITNESSETH, that the part of the first part, in consideration of the sum of dollars, of the United States of America, to in hand paid, by the part of the second part, the receipt whereof is hereby acknowledged, do hereby release and forever quitclaim, unto the part of the second part, and to heirs and assigns, all th certain lot , piece , or parcel of land situate in the , county of , state of , and bounded and described as follows, to wit: [*description*]

TOGETHER with all the tenements, hereditaments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues ad profits thereof.

TO HAVE AND TO HOLD, the said premises, with the appurtenances, unto the part of the second part, and to heirs and assigns forever.

IN WITNESS WHEREOF, the part of the first part ha hereunto set hand the day and year first above written.

[Signatures.]

Signed and sealed in the presence of

[Signatures.]

COLORADO.

Person claiming right or title to lands, tenements or hereditaments, although out of possession, and notwithstanding adverse possession, may sell, convey and transfer his or her interest in same as fully as if in possession. Revised Statutes of 1908, § 673.

Estate in lands granted, conveyed or devised to one, although words heretofore necessary to transfer estate of inheritance be not added, shall be deemed a fee simple estate of inheritance, if less estate be not limited by express words, or do not appear to be granted, devised or conveyed by operation of law. *Ibid.*, § 675.

Conveyances of real estate, and of any interest therein, duly executed and delivered, carry with them right to immediate possession of premises or interest conveyed, unless future day for possession is specified. *Ibid.*, § 677.

Covenants of seisin, peaceable possession, freedom from incumbrances, and of warranty, contained in any conveyance of real estate, or of any interest therein, shall be held to run with premises, and to inure to benefit of subsequent purchasers and incumbrancers. *Ibid.*, § 678.

In order that all conveyances executed by attorney in fact may be seen to be executed with assent of grantor, the power of attorney shall be recorded in same office as the conveyances. *Ibid.*, § 680.

Deeds, conveyances, agreements in writing of, or affecting title to real estate or any interest therein, and powers of attorney for conveyance of real estate or any interest therein, may be recorded in office of recorder of county wherein real estate situate, and from and after filing thereof for record in such office and not before, such deeds, bonds and agreements in writing shall take effect as to subsequent bona fide purchasers and encumbrancers by mortgage, judgment or otherwise not having notice thereof. *Ibid.*, § 694.

Deeds, bonds and agreements in writing, for conveying or encumbering of real estate, or any interest therein, shall be deemed from time of being filed for record, notice to subsequent purchasers or incumbrancers. *Ibid.*, § 696.

Deed to be executed by officer to purchaser, under the provisions of this chapter (entitled Judgments and Executions, chap. 76), shall contain statement of judgment upon which lands therein described were sold, and of date of execution, and may be in following form:

883. Deed by a Sheriff or Other Officer on Sale Under Execution.

WHEREAS, A. B. did at the term of the district court for the county of (as the case may be), recover a judgment against C. D., for the sum of dollars and cents and costs of suit; upon which judgment an execution was issued, dated on the day of , A. D., 19 , directed to to execute; and by virtue of said execution the said levied upon the lands hereinafter described, and the same were struck off and sold to , he being the highest and best bidder therefor, and the time and place of sale thereof having been duly advertised according to law;

Now, THEREFORE, know all by this deed that I, _____ of the said county of _____, in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said _____, his heirs and assigns, the following described tract or tracts of land (*describe the lands*), TO HAVE AND HOLD the said described premises, with all the appurtenances thereunto belonging, to the said _____, his heirs and assigns, forever.

WITNESS my hand and seal this _____ day of _____, A. D., 19 _____.

[L. S.]

884. Warranty Deed.

THIS DEED, made this _____ day of _____, in the year of our Lord one thousand nine hundred and _____, between _____, of the county of _____ and state of Colorado, of the first part, and _____ of the county of _____ and state of Colorado, of the second part,

WITNESSETH, that the said part _____ of the first part, for and in consideration of the sum of _____ dollars, to the said part _____ of the first part in hand paid by the said part _____ of the second part, the receipt whereof is hereby confessed and acknowledged, ha _____ granted, bargained, sold and conveyed, and by these presents do _____ grant, bargain, sell, convey and confirm unto the said part _____ of the second part, _____ heirs and assigns forever, all the following described lot or parcel of land, situate, lying and being in the _____, county of _____, and state of Colorado, to wit: [*description*]

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said part _____ of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

To HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances unto _____, the said part _____ of the second part, heirs and assigns forever. And the said _____, part _____ of the first part, for _____ sel _____, heirs, executors and administrators, do covenant, grant, bargain, and agree to and with the said part _____ of the second part, _____ heirs and assigns, that at the times of the ensealing and delivery of these presents well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and ha _____ good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, sales, liens, taxes, assessments and encumbrances of whatever kind or nature _____ soever, _____ and the above bargained premises in the quiet and peaceable possession of the said part _____ of the second part, _____ heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part _____ of the first part shall and will warrant and forever defend.

IN WITNESS WHEREOF, the said part _____ of the first part ha _____ hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

885. Warranty Mining Deed.

As in Form No. 887, except that for the words "granted, bargained, sold, remised, released and forever quitclaimed" and "grant, bargain, sell, remise, release and forever quitclaim" are inserted the following words: "granted, bargained, sold, conveyed and confirmed," and "grant, bargain, sell, convey and confirm" and at the † are inserted the following words: And the said , part of the first part, for sel , heirs, executors and administrators, do covenant, grant, bargain and agree, to and with the said part of the second part, heirs and assigns, that at the time of the ensembling and delivery of these presents, well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and ha good right, full power and lawful authority to grant, bargain, sell and convey the same, in manner and form aforesaid, and that the same are free and clear from all former or other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever; and the above bargained premises, in the quiet and peaceable possession of the said part of the second part, heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part of the first part shall and will warrant and forever defend, always saving and excepting the same provisions, reservations and limitations contained in the patent of the United States, issued or to be issued for said property.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in. the presence of

(Signatures.)

886. Quitclaim Deed.

THIS DEED, made this day of , in the year of our Lord one thousand nine hundred and , between of the , county of , and state of Colorado, of the first part, and of the , county of , and state of Colorado, of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to the said part of the first part in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, ha remised, released, sold, conveyed and quitclaimed, and by these presents do remise, release, sell, convey and quitclaim unto the said part of the second part, heirs and assigns forever, all the right, title, interest, claim and demand which the said part of the first part ha in and to the following described , situate, lying and being in the , county of , and state of Colorado, to wit: [description]

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the said part of the first part, either in law or equity, to the only proper use, benefit and behoof of the said part of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set
hand and seal the day and year first above written.

[Signatures and seals.]

Signed and delivered in the presence of
[Signatures.]

887. Quitclaim Mining Deed.

THIS INDENTURE, made this day of , in the year of our Lord
one thousand nine hundred , between of the , county of
and state of Colorado, part of the first part, and of the
, county of , and state of Colorado, part of the second part;

WITNESSETH, that the said part of the first part, for and in considera-
tion of the sum of dollars, to in hand paid by the said part
of the second part, the receipt whereof is hereby acknowledged, ha granted,
bargained, sold, remised, released and forever quitclaimed, and by these
presents do grant, bargain, sell, remise, release and forever quitclaim,
unto the said part of the second part, heirs and assigns, the fol-
lowing described property, situate, lying and being in mining dis-
trict, in the county of and state of Colorado, to wit: [description]

TOGETHER with all the dips, spurs and angles, and all the metals, ores,
gold and silver bearing quartz, rock and earth therein, and all the rights,
privileges and franchises thereto incident, appendant and appurtenant, or
therewith usually had and enjoyed; and all and singular the tenements,
hereditaments and appurtenances thereto belonging, or in anywise apper-
taining, and the rents, issues and profits thereof; and all the estate, right,
title, interest, claim and demand whatsoever, as well in law as in equity, of
the said part of the first part, of, in or to the said premises, and every
part and parcel thereof, with the appurtenances.*

TO HAVE AND TO HOLD, all and singular the said premises, together with
the appurtenances and privileges thereto incident, unto the said part of
the second part, heirs and assigns forever†

IN WITNESS WHEREOF, the said part of the first part ha hereunto set
hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of
(Signatures.)

888. Quitclaim Mining Deed with Covenant for Additional Title.

[Insert at * in the last preceding form, the following]: And the said
, part of the first part, for heirs, executors and administrators,
do hereby covenant with the said part of the second part, heirs and
assigns, that the said part of the first part, at the request of the said
part of the second part, heirs or assigns, shall and will from time
to time, and at all times hereafter, execute, acknowledge and deliver, or
cause to be executed, acknowledged and delivered, all and every such further
and other acts, conveyances and assurances in the law for the better assuring
the said part of the second part, heirs and assigns, of the prem-
ises, in manner as above conveyed or mentioned, and intended to be con-

veyed, as by the said part of the second part, heirs and assigns, or counsel learned in the law, shall be reasonably advised and required.

889. Mining Deed.

THIS INDENTURE, made this _____ day of _____, in the year of our Lord one thousand nine hundred _____, between _____ of the _____, county of _____, and state of Colorado, part of the first part, and _____ of the _____, county of _____, and state of Colorado, part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of _____ dollars, to _____ in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim, unto the said part of the second part, heirs and assigns, the following described property, situate, lying and being in _____ mining district, in the county of _____ and state of Colorado, to wit: [*description*]

TOGETHER with all the dips, spurs and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in and to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said part of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said part of the first part has hereunto set hand and seal the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

890. Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____, county of _____, and state of Colorado, hereinafter called the part of the first part, held and firmly bound unto _____, of the _____, county of _____, and state of Colorado, hereinafter called the part of the second part, in the penal sum of _____ dollars, lawful money of the United States, for the payment of which sum well and truly to be made to the said part of the second part, heirs, executors, administrators or assigns, the part of the first part hereby binds _____, heirs, executors and administrators firmly by these presents.

Sealed with _____ seal and dated this _____ day of _____, A. D. 19 _____.

WHEREAS, the above bounden part of the first part has agreed to sell to the said part of the second part, the following described property situate, lying and being in the _____, county of _____, and state of Colorado, to wit:

[*description*] together with all and singular the improvements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, for the sum of dollars, to be paid as follows, to wit: , for which deferred payments the said part of the second part ha given promissory note .

Now, the condition of this obligation is such, that if the said part of the second part shall pay said note at maturity and the interest thereon as the same shall become due and payable, and shall in the meantime pay all taxes on said property, and the said part of the first part shall, on completion of said payments, make, execute and deliver, or cause to be made, executed and delivered, a good and sufficient deed, conveying said property to the said part of the second part, or to such person or persons as may direct, then this obligation to be void; otherwise to remain in full force. And it is expressly agreed, by and between said parties, that time is of the essence hereof and that in the event of the non-payment of said sum of money, interest or taxes, or any part thereof, promptly, when due and payable, that then the said part of the first part will be absolutely discharged at law and in equity, from any and all liability to make, execute and deliver said deed, and will have the right to take immediate possession of said property and to retain all payments made in full satisfaction and liquidation of all damages sustained, or if prefer to do so, may declare said note thereupon due and payable, anything therein or herein to the contrary notwithstanding, and may make, execute and deliver or tender said deed and enforce the payment of said note . And it is further agreed, that in the event of the non-payment of said sum of money, interest or taxes, as hereinbefore provided, and the part of the first part electing to not make, execute and deliver or tender said deed and being let into the possession of said property, the said part of the second part shall be entitled to the return of the unpaid note canceled.

[*Signatures and seals.*]

Signed, sealed and delivered in the presence of

[*Signatures.*]

891. Contract for Sale and Purchase of Property.

THIS AGREEMENT, made in duplicate, this day of , A D. 19 , between , of the , county of , and state of Colorado, of the first part, and . of the second part:

WITNESSETH, that if the part of the second part shall first make the payments and perform the covenants herein mentioned to be made and performed by the said part of the second part, the said part of the first part hereby agree to convey to the said part of the second part, the following described lot, piece, or parcel of land, situate, lying and being in the , county of , and state of Colorado, to wit: [*description*] in fee simple by good and sufficient warranty deed, free and clear from all liens and encumbrances of whatever kind or nature soever, except

And the said part of the second part hereby agree to pay to the said part of the first part, as the purchase price of said land, subject to said excepted liens and incumbrances, the sum of dollars, in the manner following, to wit: dollars cash in hand paid, the receipt whereof is hereby

acknowledged, and with interest payable upon the deferred payments at the rate of per cent. per annum from date until paid, payable , and to pay all taxes and assessments that may be hereafter levied upon said premises before the same become delinquent, and to keep all buildings erected thereon insured for the benefit of the part of the first part for the value thereof, and in case of failure of the said part of the second part to make any one or more of said payments, or perform any of the covenants agreed to be made and performed by the said part of the second part, this agreement may be forfeited and determined at the election of said part of the first part upon giving to said part of the second part days' notice of intention so to do; and the said part of the second part shall forfeit all payments made, and such payments shall be retained by the said part of the first part in full satisfaction and liquidation of all damages the part of the first part may have sustained, and in case possession has been delivered to the part of the second part, he shall have the right to re-enter and take immediate possession of said premises.

IT IS MUTUALLY AGREED, that time shall be of the essence of this agreement, and if at any time the same shall be forfeited and determined in the manner above provided, the said part of the second part hereby agree to immediately surrender and deliver up said above described premises, peaceably, to the said part of the first part, and if the said part of the second part shall remain in possession of said premises after such termination, said part of the second part shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to eviction and removal, forcibly or otherwise, with or without process of law.

AND it is further mutually agreed that all the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

892. Title Bond to Mining Property.

KNOW ALL MEN BY THESE PRESENTS, that , , of the , county of , and state of Colorado, hereinafter called the part of the first part, held and firmly bound unto , of the , county of , and state of Colorado, hereinafter called the part of the second part, in the penal sum of dollars, lawful money of the United States, for the payment of which sum well and truly to be made to the part of the second part, heirs, executors, administrators or assigns, the part of the first part hereby bind sel , heirs, executors and administrators firmly by these presents.

WITNESS, hand and seal this day of , A. D. 19 .

The conditions of the foregoing obligation are such that whereas, the above bounden part of the first part, in consideration of the sum of dollars, in hand paid, and other valuable considerations, ha on the day and year aforesaid, agreed to sell to the part of the second part, the following described mining property, situate, lying and being in mining district in the

county of _____, and state of Colorado, to wit: [description] together with all and singular the improvements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, for the sum of _____ dollars, to be paid as follows, to wit: _____ dollars, on or before _____, A. D. 19 _____, _____ dollars, on or before _____, A. D. 19 _____, _____ dollars, on or before _____, A. D. 19 _____, which may be paid to the part _____ of the first part, in person, or by depositing the same to _____ credit at the _____ National Bank of _____, at the times aforesaid.

And the said part _____ of the first part, for _____ sel _____, _____ heirs, executors and administrators, hath agreed to furnish on or before the _____ day of _____, A. D. 19 _____, an abstract of title to all of the above described property, and to make, execute and acknowledge unto the part _____ of the second part, _____ heirs, executors, administrators or assigns, or to such person or persons as _____ shall designate, a good and sufficient deed or deeds of all of the above described property conveying a clear and perfect title (except as against the United States) free from all incumbrance _____, which said deed shall be deposited on or before the _____ day of _____, A. D. 19 _____, in escrow with _____, to be delivered to the part _____ of the second part, _____ heirs, executors, administrators or assigns, on the payment in full of the purchase money as aforesaid, it being understood and agreed that time shall be of the essence hereof and that in case of failure of the part _____ of the second part, _____ heirs, executors, administrators or assigns, to make said payments at the times mentioned, such sum or sums as may have been paid hereunder shall thereupon be forfeited to and retained by the part _____ of the first part, as liquidated damages, and the part _____ of the first part shall forthwith be entitled to the return of said deed so placed in escrow, and of said abstract so furnished, and that notice of forfeiture is hereby expressly waived by the part _____ of the second part.

Now, if the part _____ of the second part shall fail to pay the sum or sums of money as hereinbefore provided, and if the part _____ of the first part shall faithfully perform the covenants herein set forth, then this obligation shall be null and void, otherwise to remain in full force and effect.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

893. Bond and Lease, Mining Property.

KNOW ALL MEN BY THESE PRESENTS, that _____, _____, of the _____, county of _____, and state of Colorado, hereinafter called the part _____ of the first part, _____ held and firmly bound unto _____, of the _____, county of _____, and state of Colorado, hereinafter called the part _____ of the second part, in the penal sum of _____ dollars, lawful money of the United States, for the payment of which sum well and truly to be made by the part _____ of the first part to the part _____ of the second part, _____ heirs, executors, administrators or assigns, the part _____ of the first part hereby bind _____ sel _____, _____ heirs, executors and administrators, firmly by these presents. Witness _____ hand and seal this _____ day of _____, A. D. 19 _____.

WHEREAS, the above bounden part _____ of the first part, on the day of the

date hereof, ha agreed to sell to the said part of the second part the following described property, situated, lying and being in mining district, in the county of , and state of Colorado, to wit: [description] for the sum of dollars, which said sum is to be paid to the part of the first part, or deposited to credit in the , in the manner following, to wit: On or before the day of , A. D. 19 , the sum of . [etc.]

AND WHEREAS, the said part of the first part ha further agreed to make, execute and acknowledge within days from the date hereof, unto the said part of the second part, a good and sufficient deed of all the foregoing property, showing a clear and perfect title (except as against the United States), free from all incumbrance, which said deed shall be placed, within days from the date hereof, with in escrow, to be delivered to the said part of the second part, or assigns, on the payment in full of said purchase money, and

WHEREAS, the said part of the first part ha further agreed to place the said part of the second part, or assigns, in full and peaceable possession of said property, to mine, remove and sell ore therefrom; the said part of the second part, or assigns, to commence work on said premises before the day of , A. D. 19 , and thereafter to work the same continuously in a thorough and workmanlike manner, employing at least men underground, working at least shifts to the man each calendar month, and to permit the part of the first part to have access to all parts of said property at all times and to allow no person not in privity with the parties hereto to take or hold possession of said property or any part thereof under any pretense whatever, and during the continuance of this bond and lease to deposit in to the credit of said part of the first part of the net smelter or mill returns of all ore taken from said property as and when received, said sum so deposited to be a part payment of said purchase money .

Now, THEREFORE, the condition of the above obligation is such that if the said part of the second part, or assigns, shall fail to comply with the terms of the aforesaid agreement or any of them, time being of the essence hereof, and if the said part of the first part shall well and faithfully perform the same, then this obligation shall be null and void, otherwise remain in full force and effect, and in case of such failure all sums deposited as aforesaid shall be retained by the said part of the first part as liquidated damages and the part of the second part shall forthwith surrender possession of said premises.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

894. Deed of Stock Brand.

Law of 1899.

KNOW ALL MEN BY THESE PRESENTS, that of the county of in the state of Colorado, part of the first part, for and in consideration of the sum of dollars, to in hand paid by of the county of , post-office , in the state of Colorado, part of the second part,

the receipt of which sum is hereby acknowledged, ha granted, sold, assigned and transferred, and by these presents do grant, sell, assign and transfer unto the said part of the second part, heirs and assigns forever, all right, title, interest and claim in and to the following described stock brand, to wit:

| BRAND. | | | | | EAR MARKS. (To be used in connection therewith.) | | | | |
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and which said above described is of record in the office of the secretary of state of the state of Colorado.

TO HAVE AND TO HOLD the said stock brand and the right to use and enjoy the same unto the said part of the second part, h heirs and assigns forever. And the said part of the first part, for h heirs, executors and administrators, do hereby covenant to and with the said part of the second part, and h assigns, that at the time of the ensailing and delivery of these presents h lawfully possessed of the said brand as of h own property, and has good right, full power and lawful authority to sell and transfer the same in manner and form as aforesaid; and that h will warrant and defend the same to the said part of the second part and h heirs and assigns forever against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

CONNECTICUT.

All conveyances of lands shall be in writing, subscribed with grantor's own hand, or with his mark with his name thereto annexed, or by his attorney authorized for that purpose by a power executed in the manner provided for conveyances. General Statutes, Revision of 1902, § 4029.

No conveyance shall be effectual to hold lands against any other person but grantor and his heirs, unless recorded on the records of town in which lands lie; and town clerk shall, on receipt of conveyance of lands, brought to him for record, note thereon day, month, and year, when he received it, and the record shall bear same date; and when he shall have received a conveyance of lands, to be recorded, he shall not deliver it up till recorded; and where a conveyance is executed by power of attorney it shall be recorded with the deed. Ibid., § 4036.

When any conveyance of land, situated in two or more towns, shall have been lost after being recorded in one or more of said towns, a certified copy of the record thereof may be recorded in the other towns; and when so recorded shall have same effect as a record of original instrument. *Ibid.*, § 4038.

An unacknowledged deed, and any instrument intended as conveyance of lands, but which by reason of a formal defect shall operate only as a conveyance of an equitable interest in such lands, and contracts for the conveyance of lands, or of any interest therein, and all instruments by which an equitable interest in lands is created, in which such lands are particularly described, may be recorded in the records of town in which such lands are; and such record shall be notice to all the world of the equitable interest thus created. *Ibid.*, § 4039.

All conveyances and leases, for any term, or building, land or tenement, of which grantor or lessor is ousted by entry and possession of another, unless made to person in actual possession, shall be void. *Ibid.*, § 4042.

895. Warranty Deed.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING: Know ye, that _____, of the town of _____, county of _____, and state of Connecticut, for the consideration of _____ dollars, received to _____ full satisfaction of _____, do give, grant, bargain, sell and confirm unto the said _____, [*here insert description of the premises.*]

TO HAVE AND TO HOLD the above-granted and bargained premises, with the appurtenances thereof, unto _____, the said grantee, _____ heirs and assigns, forever, to _____ and their own proper use and behoof. And also _____, the said grantor _____, do for _____, heirs, executors, and administrators, covenant with the said grantee, _____ heirs and assigns, that at and until the ensealing of these presents, _____ well seized of the premises as a good indefeasible estate in fee simple and have a good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever.

And furthermore, _____ the said grantor do _____ by these presents bind _____ sel _____ and _____ heirs forever, to warrant and defend the above-granted premises to _____, the said grantee, _____ heirs and assigns against all claims and demands whatsoever.

IN WITNESS WHEREOF, _____ have hereunto set _____ hand and seal, this _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

Signed, sealed, and delivered in presence of

[SEAL.]

[SEAL.]

896. Quitclaim Deed.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME — GREETING:

KNOW YE, that _____ for the consideration of _____ received to _____ full satisfaction of _____ do remise, release and forever quitclaim unto the said _____; his heirs and assigns forever, all the right, title, interest, claim and demand whatsoever as _____ the said releasor have or ought to have in or to [*description*].

TO HAVE AND TO HOLD the premises, with all the appurtenances, unto the said releasee, _____ heirs and assigns forever, so that neither _____ the

releasor nor heirs nor any other person under or them shall hereafter have any claim, right or title in or to the premises or any part thereof, but therefrom and they are by these presents forever barred and excluded.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

DELAWARE.

Where there is no express covenant in a deed, words *grant, bargain, and sell*, shall, unless specially restrained, imply a special warranty against grantor and heirs, and all persons claiming under him. Revised Statutes, as amended to 1893, p. 625, chap. 83, § 2.

The recording of deed in recorder's office for one county shall have effect only in respect to lands or tenements, mentioned in said deed or instrument, situated in said county. *Ibid.*, p. 628, chap. 83, § 15.

If conveyance of lands, tenements, or hereditaments, be absolute on face of it, and there be a defeasance, or written contract in nature of defeasance, or for reconveyance of premises, or part thereof, person to whom conveyance is made, shall cause to be indorsed thereon, and recorded therewith, a note stating that there is such defeasance, or contract, and the general purport of it, or the recording of such conveyance shall be of no effect; and such defeasance, or contract, must be recorded in recorder's office for county wherein such lands, tenements, or hereditaments are situate, within sixty days after day of making same, or it shall not avail against a fair creditor, mortgagee, or purchaser for valuable consideration of or from person to whom such conveyance is made; unless it shall appear that creditor, when giving credit, or mortgagee, or purchaser, when advancing consideration, had notice of defeasance, or contract. *Ibid.*, p. 629, chap. 83, § 18.

Warranty made by a tenant for life shall not, by descending or coming to a person in remainder or reversion, bar or affect his title; and a collateral warranty shall not in any case bar or affect a title not derived from person making such warranty. *Ibid.*, p. 631, chap. 83, § 28.

897. Warranty Deed.

THIS INDENTURE, made the day of , A. D. 19 , between , of , and , his wife, of the one part and , of , of the other part, WITNESSETH: That the said , and , his wife, for and in consideration of the sum of dollars, lawful money, to them well and truly paid by the said , at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said , his heirs and assigns, all that [description], together with all and singular the buildings, improvements, woods, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever, of them, the said , and , his wife, at law, equity or otherwise, in and to the same and every part and parcel thereof,

TO HAVE AND TO HOLD the said property and lot, or piece of ground above described, hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said _____, his heirs and assigns, to and for his and their only proper use and behoof forever.

And the said _____, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree to and with the said _____, his heirs, and assigns, that he, the said _____, and his heirs, all and singular the hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said _____, his heirs and assigns, against himself, the said _____ and his heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same by, from, or under him, them, or any of them, shall and will warrant and forever defend by these presents.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals.

Dated the day and year first above written.

[Signatures and seals]

Sealed and delivered in the presence of

[Signatures.]

DISTRICT OF COLUMBIA.

No estate of inheritance, or for life, or for longer term than one year, in real property shall be created except by deed signed by grantor or lessor, or by will. (Code of Law of 1901, amended to 1905, § 492.)

No deeds of conveyance of real estate by individuals shall be executed by attorney. *Ibid.*, § 498.

Deed conveying real property, or interest therein, executed and delivered to person in whose favor same is executed, shall take effect from date of delivery, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in property, it shall take effect from time of delivery to recorder of deeds for record. *Ibid.*, § 499.

When two or more deeds of same property are made to bona fide purchasers for value without notice, the deed or deeds first recorded according to law shall be preferred. *Ibid.*, § 500.

No words of inheritance shall be necessary in deed to create a fee simple estate; but every conveyance of real estate shall pass a fee simple or other entire estate of grantor, unless contrary intention shall appear by express terms or be necessarily implied. *Ibid.*, § 502.

The word "grant," or the phrase "bargain and sell," or other words purporting to transfer whole estate shall pass the whole estate and interest in the property described, unless there be limitations or reservations showing different intent. *Ibid.*, § 503.

When, in any deed, the word "covenant" is used, it shall have same effect as if the covenant was expressed to be by covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with grantee or lessee, his heirs, devisees, personal representatives, and assigns. *Ibid.*, § 505.

Covenant by grantor, in deed conveying real estate, "that he will warrant generally the property hereby conveyed," or a grant of real estate in which the granting words are followed by words "with general warranty," shall have same effect as if grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever. *Ibid.*, § 506.

Covenant by grantor, in deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by words "with special warranty," shall have same effect as if grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. *Ibid.*, § 507.

Covenant by grantor, in deed of land, "that the said grantee shall quietly enjoy said land," shall have same effect as if he had covenanted that the said grantee, his heirs and assigns, shall, at any and all times hereafter, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever. *Ibid.*, § 508.

Covenant by grantor, in deed of land, "that he has done no act to incumber said land," shall be construed to have same effect as if he had covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or incumbered in title, estate, or otherwise. *Ibid.*, § 509.

Covenant by grantor, in deed of land, "that he will execute such further assurance of said land as may be requisite," shall have same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, or intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required. *Ibid.*, § 510.

Any person claiming title to land may convey his interest in same, notwithstanding there may be an adverse possession thereof. *Ibid.*, § 513.

898. Fee Simple Deed, Statutory Form.

THIS DEED, made this day of , in the year , by me, , of , WITNESSETH, that in consideration of [*here insert consideration*], I, the said , do grant unto [*here insert grantee's name*], of , all that [*here describe the property*].

[SEAL.]

WITNESS my hand and seal.

899. Deed of Life Estate, Statutory Form.

THIS DEED, made this day of , in the year , by me, , of , WITNESSETH, that in consideration of [*here insert consideration*], I, the said , do grant unto , of , all that (and so forth) [*here describe the property*] to hold during his life and no longer.

WITNESS my hand and seal.

[SEAL.]

The foregoing forms or forms to like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the above forms. Any other form conforming to the rules hereinbefore laid down shall be sufficient. *Ibid.*, § 556, chap. 16, subd. 5.

900. Deed in Fee Simple, Usual Form.

THIS DEED, made this day of , in the year one thousand nine hundred and , by and between , part of the first part, and , part of the second part,

WITNESSETH, that the part of the first part, for and in consideration of dollars, lawful money of the United States of America, to in hand paid by the part of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, ha given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the part of the second part, heirs and assigns forever, the following described land and premises, situate, lying and being in the , District of Columbia and distinguished as [*description*] together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the part of the first part, of, in, to or out of the said land and premises.

TO HAVE AND TO HOLD the said land, premises and appurtenances unto and to the only use of the part of the second part, heirs and assigns forever.

And the said , heirs, executors and administrators, do hereby covenant and agree to and with the part of the second part, heirs and assigns, that the part of the first part and heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the part of the second part, heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, or interest therein, by, from, under or through .

AND FURTHER, that the part of the first part and heirs shall and will, at any and all times hereafter, upon the request and at the cost of the part of the second part, heirs and assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the part of the second part, heirs or assigns, as the part of the second part, heirs or assigns, or their counsel learned in the law shall advise, devise or require.

IN TESTIMONY WHEREOF, said part of the first part ha hereunto set hand and affixed seal on the day and year first hereinbefore written.
[Signatures and seals.]

Signed, sealed and delivered in the presence of
[Signatures.]

901. Quitclaim Deed.

THIS DEED, , made this day of , in the year one thousand nine hundred and , by and between , part of the second part.

WITNESSETH, that the part of the first part, for and in consideration of dollars, ha granted, released, and forever quitclaimed, and do

hereby grant, release and forever quitclaim unto the part of the second part the following described land and premises, situate and distinguished as [description] together with all and singular the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in any wise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the part of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND TO HOLD the above released land and premises unto and to the use of the part of the second part, heirs and assigns forever.

IN TESTIMONY WHEREOF, said part

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

902. Court Trustee's Deed.

THIS DEED, made this day of , A. D. 19 , by , trustee of

WITNESSETH, whereas by a decree of the supreme court of the District of Columbia, passed on the day of , 19 , in the cause of equity, docket No. , the said , appointed trustee to sell the land decreed to be sold, and have sold the same to of , and said sale has been ratified and confirmed by said supreme court by an order passed in said cause on the day of , A. D. 19 , and said has fully paid the purchase money due on said sale;

Now, THEREFORE, in consideration of the premises, , the said , trustee , do grant unto , of , all the right and title of all the parties to the aforesaid cause in and to all that piece or parcel of land situate in the of Washington, District of Columbia, and known and described as follows: [description]

IN TESTIMONY WHEREOF, the part of the first part ha hereunto set hand and seal on the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

FLORIDA.

No estate or interest of freehold, or for term of years of more than two years, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by deed in writing, signed and delivered by party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of years, or by his agent thereunto lawfully authorized, unless by will. General Statutes of 1906, § 2448.

Warranty deeds of conveyance to land may be in the following form, viz.:

903. Warranty Deed, Statutory Form.

THIS INDENTURE, made this day of , A. D. , between , of the county of , in the state of , party of the first part, and

, of the county of _____, in the state of _____, party of the second part,
 WITNESSETH:

That the said party of the first part, for and in consideration of the sum of _____ dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part, his heirs and assigns forever, the following described land, to wit: _____ And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against all lawful claims of all persons whomsoever.

Ibid., § 2449.

Deed executed in foregoing form shall be held to be a warranty deed with full common law covenants, and shall just as effectually bind grantor, and his heirs, as if said covenants were specifically set out therein. Ibid., § 2450.

By deed of bargain and sale, or by deed of lease and release, or of covenant to stand seized to the use of any other person, or by deed operating by way of covenant to stand seized to use of another person, of or in any lands or tenements in this state, the possession of bargainor, releasor or covenantor shall be deemed and adjudged to be transferred to bargainee, releasee or person entitled to the use as perfectly as if such bargainee, releasee or person entitled to the use had been enfeoffed by livery of seizin of land conveyed by such deed of bargain and sale, release or covenant to stand seized; but livery of seizin can be lawfully made of the lands or tenements at time of execution of deeds or any of them. Ibid., § 2455.

Where real estate is conveyed or granted without there being used in the conveyance or grant any words of limitation, such as heirs or successors, or similar words, such conveyance or grant shall pass the fee simple or other whole estate or interest which grantor had power to dispose of in real estate conveyed or granted, unless contrary intention shall appear in conveyance or grant. Ibid., § 2456.

Clerk of circuit court shall be, in county in which he is clerk, the recorder of deeds, and of all other papers not pertaining to the circuit court which he may be required by law to record.

For purposes of such recording, he shall keep:

A record of deeds, in which he shall record all deeds, and all leases of land, and all powers of attorney to execute any of such instruments, and all agreements relating to the conveyances of land which may be in form entitled to record. Ibid., § 1832.

No conveyance or transfer of real property, or of any interest therein, nor any lease for term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for valuable consideration and without notice, unless same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless power of attorney be recorded before accruing of right of such creditor or subsequent purchaser. Ibid., § 2480.

All instruments relating to real property which are authorized or required to be recorded shall be deemed to be recorded from time same are filed with officer whose duty it is to record same. Ibid., § 2488.

904. Warranty Deed.

THIS WARRANTY DEED OF CONVEYANCE, executed this _____ day of _____, in the year of our Lord one thousand nine hundred and _____, by and between _____, of the first part, and _____, of the second part,

WITNESSETH, that the said part _____ of the first part, for and in consideration of the sum of _____ dollars, lawful money of the United States of America,

to in hand paid by the said part of the second part, at or before the enfeoffing or delivery of these presents give, grant, bargain, sell, alien, enfeoff, remise, release, convey and confirm unto the said part of the second part and heirs, that certain property in the county of , and state of , described as follows: [*description*]

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and, also, all the estate, right, title, interest, homestead, dower and right of dower, separate estate, property, possession, claim and demand whatsoever, at law and in equity, either and both, of the said part of the first part, of, in and to the same, and every part and parcel thereof: To have and to hold the above described premises, each and every, unto the said part of the second part, heirs and assigns, in fee simple, absolute, indefeasibly, forever.

And the said part of the first part, for and heirs, executors and administrators, jointly and severally, covenant, promise and agree to and with the said part of the second part, heirs, executors, administrators and assigns, that the said part of the first part, at the time of the sealing and delivery of these presents, lawfully seized in fee simple of a good, absolute and indefeasible estate of inheritance of and in all and singular the above described premises, each and every, and good right, full power and lawful authority to convey the same in manner and form aforesaid; that the said part of the second part, heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above described premises, and every part and parcel thereof, without any let, suit, trouble, molestation, eviction or disturbance of the said part of the first part, heirs, executors and administrators, each and every, shall make, execute and acknowledge such further and other deeds and assurances as by counsel learned in the law may be considered reasonably proper to effectuate the full intent and meaning of this instrument.

And the said part of the first part, for and heirs, the above described premises, and every part and parcel thereof, unto the said part of the second part, heirs and assigns, against the said part of the first part, and heirs and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

This alienation is with the joint consent of husband and wife, where that relation exists.

IN WITNESS WHEREOF, the said part of the first part hereunto set hand and seal each in the presence of two subscribing witnesses.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of us

[*Signatures.*]

905. Quitclaim Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , of the first part, and , of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to in hand paid by the said part of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, ha remised, released and quitclaimed, and by these presents do remise, release and quitclaim unto the said part of the second part, and to heirs and assigns forever, all [*description*], together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the right, title, interest, separate estate, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, in and to the above described premises and every part and parcel thereof, with the appurtenances.

To HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said part of the second part, heirs and assigns, forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

906. Timber Deed or Lease.

KNOW ALL MEN BY THESE PRESENTS, that , of the county of and state of , part of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to paid by , of county, state of , part of the second part, the receipt whereof is hereby acknowledged, and the further consideration set forth hereinafter, ha granted, bargained, sold, transferred and delivered, and by these presents do grant, bargain, sell, transfer and deliver unto the said party of the second part, executors, administrators and assigns, the following goods and chattels:

All of the timber over inches in diameter at the tree base, which is growing or standing upon the following described real estate, situate, lying and being in the county of , state of , to wit: [*description*]

Provided that said part of the second part shall cut down and remove said timber from off said land within years from the date of this instrument, when the same shall terminate and all rights hereunder shall cease and determine; and provided further that the said part of the second part shall pay for said timber in the following manner and at the following rate, to wit:

And provided further that the said part of the second part shall have the privilege of constructing and building team or tram roads or railroads over and through any part of said land for the purpose of removing said timber therefrom.

TO HAVE AND TO HOLD the same unto the said part of the second part, executors, administrators and assigns, forever.

And do, for and heirs, executors and administrators, covenant to and with the said part of the second part, executors, administrators and assigns, that the lawful owner of the said land and timber; that they are free from all encumbrances; that ha good right to sell the same as aforesaid, and that will warrant and defend the sale of the said property, goods and chattels hereby made, unto the said part of the second part, administrators and assigns, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , one thousand nine hundred and .

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

GEORGIA.

Deed to lands, made while same are held adversely to maker of deed, is not void. Code of 1895, § 3605.

When grantee accepts deed and enters thereunder, he will be bound by covenants therein, although deed not signed by him. *Ibid.*, § 3600.

Deed to lands in State must be in writing, signed by maker, and delivered to purchaser, or some one for him, and be made on valuable or good consideration. Consideration of deed may be always inquired into when principles of justice require it. *Ibid.*, § 3599.

Possession of deed by grantee is presumptive proof of delivery, but may be rebutted. *Ibid.*, § 3603.

No prescribed form is essential to validity of deed to lands. If sufficient in itself to make known the transaction between the parties, no want of form will invalidate it. *Ibid.*, § 3602.

Purchaser of lands obtains with the title, however conveyed to him, all rights any former owner, under whom he claims, may have had by virtue of any covenants of warranty of title, or of quiet enjoyment, or of freedom from incumbrances, contained in the conveyance from any former grantor, unless transmission of such covenants with land is expressly negated in covenant itself. *Ibid.*, § 3612.

In sale of land, there is no implied warranty of title. *Ibid.*, § 3613.

General warranty of title against claims of all persons, includes in itself covenants of right to sell, and of quiet enjoyment and of freedom from incumbrances. *Ibid.*, § 3614.

General warranty of title in deed against claims of all persons, covers defects in title though known to purchaser at time of taking deed. *Ibid.*, § 3615.

Offer to rescind is not necessary to recovery upon covenant of warranty. *Ibid.*, § 3616.

Word "heirs," or its equivalent, is not necessary to create absolute estate; but every conveyance, properly executed, shall be construed to convey the fee, unless a less estate is mentioned and limited in such conveyance. *Ibid.*, § 3083.

Every deed conveying lands shall be recorded in office of clerk of superior court of county where land lies. The record may be made at any time, but such deed loses its priority over subsequent recorded deed from same vendor, taken without notice of existence of first. *Ibid.*, § 3618.

Purchaser at judicial sales may enforce any covenants of warranty running with the land which may be incorporated in the previous title-deeds, *Ibid.*, § 5450.

907. Warranty Deed.

STATE OF GEORGIA,

THIS INDENTURE, made the day of , A. D. 19 , between , of , of the one part, and , of , of the other part, WITNESSETH: That the said , for and in consideration of the sum of dollars, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey and confirm unto the said , his heirs and assigns, all that parcel of land, situate, etc., [*here insert description*].

TO HAVE AND TO HOLD the said premises, with all and singular the rights, members, and appurtenances thereof, to the same belonging, or in anywise appertaining, to the only proper use, benefit, and behoof of the said , his heirs, executors, administrators, and assigns, in fee simple; and the said , his heirs, executors, administrators, and assigns, the said bargained premises unto the said , his heirs, executors, administrators, and assigns, and against the said , his heirs, executors, and administrators, and all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

IN WITNESS, ETC.

[SEAL.]

908. Bond for Titles.

STATE OF GEORGIA, }
County. }

KNOW ALL MEN BY THESE PRESENTS, that , of the county of , state of , are held and firmly bound unto , of the county of , state of , heirs, executors and administrators, in the just and full sum of dollars, for the true payment of which bind heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with seal, and dated this day of , 19 .

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that, whereas, the said obligee ha this day made and delivered to the said obligor certain promissory note for the sum of , to become due as follows:

Now, should the said obligee well and truly pay said promissory note, then , the said obligor, bind to make, or cause to be made, to said obligee or assigns, good and sufficient titles, in fee simple, to all [*description*], with all the rights, members and appurtenances to said lot of land in any way appertaining and belonging, which, if the said should do, then this bond to be null and void; else to remain in full force and virtue.

Tested by

[Signatures and seals.]

HAWAII.

Registrar of conveyances shall keep a "Daily Entry Book," having each page divided into appropriate columns, with titles or heads as prescribed. Act 4 of 1905, approved March 14, 1905, § 1.

He shall enter in said book in order in which they are received, all deeds left for record; noting in first column year, month, day, hour and minute of reception, and the other particulars in the appropriate columns; and every deed or instrument shall be considered as recorded at time so noted. *Ibid.*, § 2.

Every instrument entitled by law to be recorded, shall be recorded in the

order and as of time when same is delivered to registrar of conveyances for that purpose, and shall be considered as recorded from time of such delivery. Revised Laws (1905), § 2359, as amended by Act 7 of 1905, § 2, approved March 18.

It shall not be lawful to record any conveyance, unless previously stamped, as provided in chapter 101. Revised Laws (1905), § 2360.

Deeds, leases for term of more than one year, or other conveyances of real estate within this Territory, shall be recorded in office of registrar of conveyances, and every such conveyance not so recorded shall be void against subsequent purchaser, in good faith and for valuable consideration, not having actual notice of such conveyance, of same real estate, or any portion thereof, whose conveyance is first duly recorded. *Ibid.*, § 2380.

Powers of attorney for transfer of real estate within this Territory shall, in order to their validity, be recorded in office of registrar of conveyances, in default of which no such instrument shall be binding to the detriment of third parties, or conclusive upon their rights and interests. *Ibid.*, § 2381.

IDAHO.

Person claiming title to real property in adverse possession of another, may transfer it with same effect as if in actual possession. Revised Codes of 1909, § 3099.

Words of inheritance or succession are not requisite to transfer a fee in real property. *Ibid.*, § 3102.

Conveyance of estate in real property may be made by instrument in writing, subscribed by party disposing of same, or by his agent thereunto authorized by writing. *Ibid.*, § 3105.

When attorney in fact executes instrument transferring estate in real property, he must subscribe name of his principal to it, and his own name as attorney in fact. *Ibid.*, § 3110.

A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from grant that a lesser estate was intended. *Ibid.*, § 3112.

Every grant or conveyance of an estate in real property is conclusive against grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer, who in good faith, and for valuable consideration, acquires title or lien by instrument that is first duly recorded. *Ibid.*, § 3114.

Grant made by owner of estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work forfeiture of his estate, but passes to grantee all the estate which grantor could lawfully transfer. *Ibid.*, § 3115.

From the use of the word "grant" in any conveyance by which an estate of inheritance, possessory right, or fee simple is to be passed, the following covenants, and none other, on part of grantor, for himself and his heirs, to grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. *Ibid.*, § 3120.

Instrument executed by attorney in fact must not be recorded until power of attorney authorizing execution of the instrument is filed for record in same office. *Ibid.*, § 3154.

Instruments entitled to be recorded must be recorded by county recorder of county in which the real property affected thereby is situated. *Ibid.*, § 3156.

Instrument is deemed to be recorded when it is deposited in the recorder's office with the proper officer for record. *Ibid.*, § 3157.

Every conveyance of real property recorded as prescribed by law, from the time it is filed with recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees. *Ibid.*, § 3159.

Conveyance of real property other than lease for term not exceeding one year, is void against subsequent purchaser or mortgagee of same property, or part thereof, in good faith and for valuable consideration, whose conveyance is first duly recorded. *Ibid.*, § 3160.

Any instrument affecting title to or possession of real property may be recorded. *Ibid.*, § 3149.

Transfer of land, bounded by highway, passes title of person whose estate is transferred to soil of highway in front, to center thereof, unless different intent appears from grant. *Ibid.*, § 3119.

When grant of real property purports to be an absolute conveyance, but is intended to be defeasible on performance of certain conditions, grant is not defeated or affected against any person other than grantee or his heirs or devisees, or persons having actual notice, unless instrument of defeasance, duly executed, is recorded in office of county recorder of county where property is situated. *Ibid.*, § 3404.

ILLINOIS.

Deed or other conveyance in writing, signed by party making same, shall be sufficient for giving, granting, selling, leasing or otherwise conveying or transferring lands, tenements or hereditaments in this state, so as absolutely and fully to vest in donee, grantee, bargainee, lessee, or purchaser all such estate or estates as shall be specified in such deed, lease or other conveyance. Revised Statutes of 1908, chap. 30, p. 488, § 1.

Person claiming right or title to lands, tenements or hereditaments, although out of possession, and notwithstanding adverse possession thereof, may sell, convey and transfer his or her interest in and to same, in as full and complete a manner as if in actual possession; and grantee or grantees shall have same right of action for recovery thereof, and derive same benefit and advantage therefrom, as if grantor or grantors had been in actual possession at time of executing conveyance. *Ibid.*, chap. 30, p. 489, § 4.

In deeds whereby estate of inheritance in fee simple is limited to grantee and his heirs, or other legal representatives, words "grant," "bargain" and "sell," shall be adjudged an express covenant to grantee, his heirs, and other legal representatives, to wit, that the grantor was seized of an indefeasible estate in fee simple, free from encumbrances done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against grantor, heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns, may in any action, assign breaches, as if such covenants were expressly inserted; but this law shall not extend to leases at rack-rent, or leases not exceeding one and twenty years, where actual possession goes with lease. *Ibid.*, chap. 30, pp. 489, 490, § 8.

Deeds for the conveyance of land may be substantially in following form:

909. Full Covenant Warranty Deed, Statutory Form.

The grantor [*here insert name or names and place of residence*], for and in consideration of [*here insert consideration*] in hand paid, conveys and warrants to [*here insert the grantee's name or names*] the following described real estate [*here insert description*], situated in the county of _____, in the state of Illinois.

Dated this _____ day of _____, A. D. 19 ____.

A. B. [I. S.]

Deed in substance in above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to grantee, his heirs or assigns, with covenants on part of grantor, (1) that at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all incumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon grantor, heirs and personal representatives, as fully and with like effect as if written at length in such deed. *Ibid.*, chap. 30, p. 490, § 9.

Quitclaim deeds may be in substance, in following form:

910. Quitclaim Deed, Statutory Form.

The grantor [*here insert grantor's name or names and place of residence*], for the consideration of [*here insert consideration*], convey and quitclaim to [*here insert grantee's name or names*] all interest in the following described real estate [*here insert description*], situated in the county of _____, in the state of Illinois.

Dated this _____ day of _____, A. D. 19 _____.

A. B. [L. S.]

Deed in substance in form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor, in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention. *Ibid.*, chap. 30, p. 490, § 10.

Every estate in lands which shall be granted, conveyed or devised, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inheritance, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction or operation of law. *Ibid.*, chap. 30, p. 491, § 13.

Deeds, powers of attorney, and other instruments relating to or affecting title to real estate in this state, shall be recorded in county in which such real estate is situated; but if such county not organized, then in county to which such unorganized county is attached for judicial purposes. *Ibid.*, chap. 30, p. 494, § 28.

Where original deed or other instrument relating to or affecting title to real estate, having tracts of land therein described lying in different counties, is recorded in any of such counties, it shall be lawful to record a certified copy of such deed or other instrument in counties where original not recorded; and recording of such certified copy shall be notice in same manner that the filing and the recording of the original would be, and copies from such records shall be prima facie evidence to same extent as if original had been so recorded. *Ibid.*, chap. 30, p. 494, § 29.

Deeds and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after time of filing same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until same filed for record. *Ibid.*, chap. 30, p. 494, § 30.

Deeds and other instruments of writing relating to real estate shall be deemed, from time of being filed for record, notice to subsequent purchasers and creditors. *Ibid.*, chap. 30, p. 494, § 31.

Term "real estate," as used in this act, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real. *Ibid.*, chap. 30, p. 496, § 38.

No covenant of warranty shall be considered as broken by existence of highway upon land conveyed, unless otherwise particularly specified in the deed. *Ibid.*, chap. 30, p. 496, § 39.

When premises mentioned in certificate of sale of real estate under judgment or decree of any court shall not be redeemed in pursuance of law the holder shall be entitled to deed at any time within five years from expiration of time of redemption. The deed shall be executed by sheriff, master in chancery or other officer who made sale, or his successor, or some person specially appointed by court for purpose. *Ibid.*, chap. 77, pp. 1301, 1300, §§ 30, 27a.

The deed may be substantially in the following form:

911. Deed by Sheriff or Master in Chancery.

WHEREAS, A. B. did at the term of the court of county, A. D. 19 , recover a judgment [or, decree], against C. D., for the sum of and costs of suit, upon which an execution was issued, dated the day of , A. D. 19 , directed to to execute, by virtue of which the said levied upon the premises hereinafter described, and the time and place of the sale thereof having been duly advertised according to law, the same was struck off and sold to , he being the highest and best bidder therefor [*if the certificate has been transferred, recite the fact*].

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, , of the county of , in consideration of the premises, do hereby convey to the said , his heirs and assigns, the following described lot or parcel of land [*here describe the premises*]. TO HAVE AND TO HOLD the same, with all the appurtenances thereto belonging, to the said , his heirs and assigns forever.

WITNESS my hand and seal, this day of , in the year of our Lord, 19 . [L. S.]

Ibid., chap. 77, p. 1301, § 31.

912. Mining Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred , between , of the county of , and state of , of the first part, and . of the county of , and state of , of the second part:

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to the said part of the first part, in hand paid by the said part of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby confessed and acknowledged, ha granted, bargained, sold, remised, released, conveyed and quitclaimed, and by these presents do grant, bargain, sell, remise, release, convey and quitclaim unto the said part

of the second part, heirs and assigns forever, in and to the following described mining property, situated in district, in the county of , state of , to wit: that certain quartz-mining claim, lode, lead, ledge or mineral deposit, known as the , being so situate and beginning [description] together with all the dips, spurs, angles and variations, also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part of, in or to the said premises, and every part and parcel thereof, with the appurtenances; TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said part of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

913. Creditor's Release Deed.

THIS INDENTURE, made and entered into this day of , A. D. 19 , by and between , of the county of , and state of , part of the first part, and , of , in the county of , and state of , part of the second part, WITNESSETH:

WHEREAS, the said , part of the second part, by certain deed of assignment, dated the day of , A. D. 19 , and recorded in the office of the of said county, in volume of , page , did convey, assign, transfer and set over to , of , in the county of , and state of , all and singular the lands, tenements, hereditaments and appurtenances, goods, chattels, accounts, promissory notes, bonds, bills, debts, choses in action, claims, demands, property and effects of every kind and description, real, personal and mixed, of , the said , (except such as was exempt from levy and sale under execution) for the benefit of the creditors of , the said .

WHEREAS, the trust imposed by said deed of assignment has been duly executed according to law, by said , therein appointed assignee, and the proceeds of the property, estate and effects mentioned in said deed of assignment duly applied to the payment of the claims of the creditors of the said , part of the second part, according to law, and the said part of the first part ha received respective share of the proceeds of said estate, according to the amount of respective claims against the said , part of the second part; and the said , assignee , ha

Now, THEREFORE, in consideration of the premises, and in consideration of dollars, in hand paid by said part of the second part, the receipt

whereof is hereby acknowledged, _____, the said _____, part of the first part, ha released and discharged, and by these presents do hereby forever release and discharge, the said _____, part of the second part, from all further liability upon or on account of any and all claims and demands whatsoever, which the said part of the first part, or either of them, had against the said _____, part of the second part, at the time of the making of said deed of assignment, as aforesaid. And the said part of the first part do _____, for sel _____ and _____ heirs, executors and administrators, covenant and agree to and with the said _____, part of the second part, _____ heirs, ex-ecutors and administrators that from and after the ensealing of these presents, _____ he will have and claim no further right, benefit or interest in, to or in respect of any and all claims or demands of whatever kind, which they or either of them may have had against the said _____ at the time of the making of the deed of assignment, aforesaid.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal _____, the day and year first above written.

[Signatures and seals.]

INDIANA.

Conveyances of lands or of any interest therein, shall be, by deed in writing, subscribed by grantor or his attorney, except bona fide leases for term not exceeding three years. Annotated Statutes, Revision of 1908, § 3947.

No conveyance of lands by attorney shall be good, unless attorney is empowered by instrument in writing, subscribed by his principal in like manner as conveyance is required to be. *Ibid.*, § 3948.

No person or persons shall be authorized to sell, release or convey real estate, or any interest therein, as attorney-in-fact of another, nor to make any deed or other paper entitled to record, as such attorney-in-fact, without being authorized so to do by instrument in writing, duly signed by person, persons or corporation granting such authority, particularly setting forth and specifying the power or authority given, granted and conferred, to be known as a power of attorney, which shall be duly recorded in office of recorder of county or counties where such business is to be transacted, or acts authorized to be executed; and when, after such record, the party shall do, execute or perform any act, power to do which is conferred by such power of attorney, the party conferring the power shall be bound as to all such acts done prior to notice of revoking of such authority, which notice may be given by a memorandum thereof entered on margin of record of power of attorney, duly attested by recorder, or by copy of a duly attested memorandum entered and attested as aforesaid. *Ibid.*, § 3949.

It is the duty of county recorder to refuse to receive for record any deed which appears upon the face to be executed by an attorney-in-fact, until the letter creating such power, duly executed according to law, shall be first placed of record in his office as provided in section 3949. *Ibid.*, § 3950.

Deed of release or quitclaim shall pass all the estate which grantor could convey by deed of bargain and sale. *Ibid.*, § 3955.

No conveyance of real estate in fee-simple or for life or of any future estate, and no lease for more than three years from the making thereof, shall be valid and effectual against any person other than grantor, his heirs and devisees, and persons having notice thereof, unless made by deed recorded within the time and in the manner provided in this act. *Ibid.*, § 3957.

Conveyance of lands worded in substance as follows:

914. Full Covenant and Warranty Deed, Statutory Form.

A. B. conveys and warrants to C. D. [*here describe the premises*] for the sum of [*here insert the consideration*], the said conveyance being dated, and duly signed by grantor — shall be deemed and held to be a conveyance in fee-simple to grantee, heirs and assigns, with covenant from grantor for himself, heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims. *Ibid.*, § 3958.

Conveyance of lands worded in substance as follows:

915. Quitclaim Deed, Statutory Form.

A. B. quitclaims to C. D. [*here describe the premises*], for the sum of [*here insert the consideration*], the said conveyance being duly signed by grantor, is a good sufficient conveyance in quitclaim to grantee, heirs and assigns. *Ibid.*, § 3959.

It is not necessary to use the words "heirs and assigns of the grantee," to create in the grantee an estate of inheritance; and if it be intention of grantor to convey lesser estate, it shall be so expressed in the deed. *Ibid.*, § 3960.

Every conveyance of lands or any interest therein, and every lease for more than three years, shall be recorded in recorder's office of county where lands situated; and conveyance or lease not so recorded in forty-five days from execution thereof, shall be fraudulent and void against subsequent purchaser, lessee or mortgagee in good faith and for valuable consideration. *Ibid.*, § 3962.

When deed purports to contain absolute conveyance of any estate in lands, but is made, or intended to be made, defeasible by force of a deed of defeasance, bond or other instrument for that purpose, the original conveyance shall not thereby be defeated or affected against any person other than maker of the defeasance, or his heirs or devisees or persons having actual notice thereof, unless instrument of defeasance shall have been recorded, according to law, within ninety days after date of said deed. *Ibid.*, § 3964.

Letters of attorney, containing a power to any one to sell or convey, or to sell and convey, lands as the agent of owner, may be recorded in county in which the lands to which such letter shall relate may be situate. *Ibid.*, § 3992.

Conveyance made by tenant for life or years, purporting to grant or convey a greater estate than he possessed or could lawfully convey, shall not work forfeiture of estate, but shall pass to grantee or alienee all the estate which the tenant could lawfully convey. *Ibid.*, § 3997.

916. Deed by Commissioner on Public Sale.

A. B., commissioner by the order [*or, judgment*] of [*naming the court*], in the case of [*naming the party plaintiff*], against [*naming the party defendant*], [*or*], on petition of [*naming the description of the petitioner as A. B., administrator of C. D. [or], guardian of [naming the wards]*], entered in [*describe the kind of record, number of volume and page*] conveys to E. F., [*describe the premises*] for [*state consideration*].

917. Deed by Executor or Administrator, Under Order of Court.

A. B., as executor of the last will of C. D. [*or, A. B., as administrator of the estate of C. D.*], by order of the circuit court of county,

Indiana, entered in volume of the records of said court, on page , conveys to E. F., the following real estate [*insert description*] for the sum of dollars.

If, by the terms of the devise, the executor may convey property without an order of the court, the following is an appropriate form given by the same section:

A. B., as executor of the last will of C. D. [or, A. B., as administrator with the will annexed of the estate of C. D.], by virtue of said will, recorded in volume of the Record of Wills of county, in the state of Indiana, on page , conveys to E. F. the following real estate [*here insert description*], for the sum of dollars.

IOWA.

All persons owning real estate not held by adverse possession are deemed seized and possessed of same. Code of 1897, § 2912.

Term "heirs" or other technical words of inheritance are not necessary to create and convey estate in fee simple. *Ibid.*, § 2913.

Every conveyance of real estate passes all the interest of grantor therein, unless contrary intent can be reasonably inferred from the terms used. *Ibid.*, § 2914.

Adverse possession of real estate does not prevent a person from selling his interest in same. *Ibid.*, § 2916.

No instrument affecting real estate is of any validity against subsequent purchasers for valuable consideration, without notice, unless recorded in office of recorder of county in which the same lies, as hereinafter provided. *Ibid.*, § 2925.

The county auditor shall keep in his office books for the transfer of real estate, which shall consist of a transfer book, index book and plat book. *Ibid.*, § 2927.

The form of the transfer book, index book, and book of plats is prescribed. *Ibid.*, §§ 2928, 2929.

Whenever a deed of unconditional conveyance of real estate is presented, the auditor shall enter in index book, in alphabetical order, name of grantee, and opposite thereto number of page of transfer book on which such transfer is made; and upon the transfer book he shall enter in proper columns name of grantee, grantor, date and character of instrument, description of real estate, and number or letter of the plat on which the same is marked. *Ibid.*, § 2930.

After the auditor has made the entries contemplated in the preceding sections, he shall indorse upon the instrument the following words: "Entered for taxation this day of , A. D. ," with the proper date inserted, and sign his name thereto. *Ibid.*, § 2932.

The recorder shall not file for record any deed or other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and indorsed upon the deed or other instrument. *Ibid.*, § 2934.

The recorder must keep an index book, the pages of which are so divided as to show in parallel columns, each grantor, each grantee, time when instrument was filed, its date, its nature, book and page where record thereof may be found, and description of real estate conveyed. *Ibid.*, § 2935.

He must indorse upon every instrument properly filed in his office for record the time when it was filed, and shall forthwith make the entries provided for in the preceding section, except that of the book and page where the record of the instrument may be found, and from that time such entries shall furnish constructive notice to all persons of the rights of the grantees conferred by such instruments. *Ibid.*, § 2936.

Every such instrument shall be recorded as soon as practicable, after which he shall complete the entries aforesaid, so as to show the book and page where the record is to be found. *Ibid.*, § 2938.

All instruments containing a power to convey, or in any manner relating to real estate, shall be held to be instruments affecting the same; and no such instrument when recorded as above prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is filed for record in the same office in which the instrument containing such power is recorded. Affidavits explaining any defect in the chain of title to any real estate may be recorded as instruments affecting the same, but no one except the owner in possession of such real estate shall have the right to file the same. *Ibid.*, § 2957.

The following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated:

918. Quitclaim Deed, Statutory Form.

For the consideration of dollars, I hereby quitclaim to A. B. all my interest in the following tract of real estate [*describing it*].

919. Deed in Fee Simple Without Warranty, Statutory Form.

For the consideration of dollars, I hereby convey to A. B. the following tract of real estate [*describing it*].

920. Deed in Fee with Warranty, Statutory Form.

The same as the last preceding form, adding the words: "And I warrant the title against all persons whomsoever" [*or other words of warranty, as the party may desire*].

Ibid., § 2958.

Immediately after expiration of ninety days from date of completed service of the notice provided in section 1441 of expiration of right of redemption of lot or parcel of land sold for taxes, the county treasurer then in office shall make out a deed for each lot or parcel of land sold and unredeemed, and deliver it to purchaser upon return of certificate of purchase. The treasurer shall receive twenty-five cents for each deed made by him, and may include any number of parcels of land purchased by one person in one deed, if desired by him. *Ibid.*, § 1442.

Deeds executed by the treasurer shall be substantially in the following form:

921. County Treasurer's Deed, Statutory Form.

KNOW ALL MEN BY THESE PRESENTS, that the following described real estate, viz.: [*here follows the description*], situated in the county of and state of Iowa, was subject to taxation for the year or years, A. D. , and the taxes assessed thereon for the year [*or years*] aforesaid remained due and unpaid at the date of the sale hereinafter named; and the treasurer of said county, having on the day of , A. D. , by virtue of the authority in him vested by law, at [*an adjournment of*] the sale begun and publicly held on the first Monday of December, A. D. , exposed to public sale at the office of the county treasurer in the county aforesaid, in substantial conformity with all the requirements of the statute, the real property above described, for the payment of the taxes, interest and costs then due and remaining unpaid on said property, and at the time and place aforesaid A B , of the county of and state of , having offered to pay the sum of dollars and cents, being the whole

amount of taxes, interest and costs then due and remaining unpaid on said property, for [*here follows the description of the property sold*], which was the least quantity bid for, and payment of said sum having been made by him to said treasurer, the property was stricken off to him at that price; and the said A B did, on the day of , A. D. , duly assign the certificate of the sale of the property as aforesaid and all his right, title and interest in said property to E F of the county of and state of ; and by the affidavit of , filed in said treasurer's office on the day of , A. D. , it appears that notice has been given more than ninety days before the execution of these presents to and of the expiration of the time of redemption allowed by law; and three years having elapsed since the date of said sale, and said property having not been redeemed therefrom:

Now, I, C D , treasurer of said county, for the consideration of said sum to the treasurer paid as aforesaid and by virtue of law, have granted, bargained and sold, and by these presents grant, bargain and sell to the said A B , [or, E F], his heirs and assigns, the real property hereinbefore described, to have and to hold unto him [or, E F], his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C D , treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this day of , A. D. .

[Signature.]

Ibid., § 1443.

Deeds may be made by guardian in his own name, but must be returned to the court, and the sale be approved, before the same is valid. Ibid., § 3211.

Conveyance of real estate executed by executor or administrator, shall not be valid until approved by the court, which approval shall be entered of record, and a certificate thereof indorsed on the deed, with the signature of the clerk and the seal of the court affixed thereto, and, when so indorsed, shall pass to the purchaser all the interest of the deceased therein prior to his death, and be presumptive evidence of validity thereof, and of regularity of all the proceedings. Ibid., § 3330.

Deed by executor, administrator or guardian is to be recorded in clerk's office. Ibid., § 3413.

922. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that , of county, and state of , in consideration of the sum of dollars, in hand paid by , of county, and state of , do hereby sell and convey unto the said the following described premises situated in the county of , and state of Iowa, to wit: [*description*]

And hereby covenant with the said that hold said premises by good and perfect title; that ha good right and lawful authority to sell and convey the same; that they are free and clear of all liens and encumbrances whatsoever.

And covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said hereby relinquishes her right of dower in and to the above described premises.

Signed the day of , 19 .

[Signatures.]

923. Quitclaim Deed.

KNOW ALL MEN BY THESE PRESENTS:

THAT , of the county of , and state of , in consideration of the sum of dollars in hand paid by , of the county of , and state of , do hereby quitclaim unto the said all right, title, and interest in and to the following described premises situated in county, and state of Iowa, to wit: [*description*]

And the said hereby relinquishes her right of dower in and to the above described premises.

Signed this day of , 19 .

[Signatures.]

KANSAS.

If land sold for taxes is not redeemed within three years from day of sale, county clerk of county where same was sold shall on presentation to him of certificate of sale execute in name of county, as county clerk, under seal of county, to purchaser, his heirs and assigns, a deed of the land so remaining unredeemed, which shall vest in grantee an absolute estate in fee simple in such lands, subject, however, to all unpaid taxes and charges which are a lien thereon; and such tax deed shall be prima facie evidence of regularity of all proceedings from valuation of land by assessor, inclusive, up to execution of deed, and may be recorded with like effect as other conveyances of land. Such deed shall be substantially in the following form:

924. County Clerk's Deed, Statutory Form.

KNOW ALL MEN BY THESE PRESENTS, that whereas, the following-described real property, viz., [*description*] situated in the county of , and state of Kansas, was subject to taxation for the year A. D. ; and whereas, the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas, the treasurer of said county did, on the day of , A. D. , by virtue of the authority in him vested by law, at [*an adjourned sale of*] the sale begun and publicly held on the first Tuesday of May, A. D. , expose to public sale, at the county seat of said county, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest and costs then due and remaining unpaid upon said property; and whereas, at the place aforesaid, A. B., of the county of , and state of , having offered to pay the sum of dollars and cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property, for [*here follows the description of the property sold*], which was

the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas, the said A. B. did, on the day of , A. D. , duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest in said property, to E. F. [*or, when the land or lot was bid off for the county*]; and whereas, at the place aforesaid, said property could not be sold for the amount of tax and charges thereon, and was therefore bid off by the county treasurer for said county for the sum of dollars and cents, the whole amount of tax and charges then due; and whereas, for the sum of dollars and cents, paid to the treasurer of said county on the day of , the county clerk did assign the certificate of sale of said property, and all the interest of said county in said property, to said E. F., of the county of , and state of , [*and when subsequent taxes have been paid, insert the following:* and whereas, the subsequent taxes of the year , amounting to the sum of dollars, have been paid by the purchaser, as provided by law;] and whereas, years have elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided by law: Now, therefore, I, C. D., county clerk of the county aforesaid, for and in consideration of the sum of dollars and cents, taxes, costs and interest, due on said land for the year [*or, years*] to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said A. B. [*or, E. F.*], his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him, the said A. B., [*or, E. F.*], his heirs and assigns, forever, subject, however, to all right of redemption provided by law.

IN WITNESS WHEREOF, I, C. D., county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county, on this day of , A. D. .

C. D., *County Clerk.*

[SEAL.]

General Statutes of 1909, § 9479.

Where purchaser at tax sale shall purchase more than one parcel or tract of land or lots, he may require the county clerk to include all such lands or lots in one deed, stating amount of tax, interest and penalty for which each separate tract is sold and conveyed, the sum of the separate amounts being the gross or aggregate consideration of the deed. The county clerk is allowed, in addition to his fee for the deed, five cents for each piece of land or lot so included in it. *Ibid.*, § 9480.

All tax deeds shall be recorded by person or persons to whom issued, in office of register of deeds of proper county, within six months from date of issuance thereof. If not so recorded, they shall be void. *Ibid.*, §§ 9491, 9493.

All persons owning lands not held by an adverse possession are deemed seized and possessed of same. *Ibid.*, § 1650.

Term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of real estate shall pass all the estate of grantor therein, unless intent to pass a less estate shall expressly appear or be necessarily implied in the terms of the grant. *Ibid.*, § 1651.

A conveyance of lands, worded in substance as follows:

925. Warranty Deed, Statutory Form.

A. B. conveys and warrants to C. D. [*here describe the premises*], for the sum of [*here insert the consideration*], the said conveyance being dated and duly signed by the grantor,

is a conveyance in fee simple to grantee, heirs and assigns, with covenants from grantor, for himself, heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same and guarantees the quiet possession thereof, that the same are free from all incumbrances, and he will warrant and defend the same against all lawful claims. *Ibid.*, § 1652.

A conveyance of lands, worded in substance as follows:

926. Quitclaim Deed, Statutory Form.

A. B. quitclaims to C. D. [*here describe the premises*], for the sum of [*here insert the consideration*], the said conveyance being duly signed by grantor,

is a good and sufficient conveyance in quitclaim to the grantee, his heirs and assigns. *Ibid.*, § 1653.

Conveyances of land, or of any other estate or interest therein, may be made by deed, executed by any person having authority to convey the same, or by his agent or attorney, and may be recorded. *Ibid.*, § 1654.

Any person claiming title to real estate may, notwithstanding an adverse possession thereof, sell and convey his interest therein, in same manner and with like effect as if he was in the actual possession thereof. *Ibid.*, § 1657.

All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, or by his lawful agent or attorney. *Ibid.*, § 1658.

Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, may be recorded in office of register of deeds of county in which such real estate is situated. *Ibid.*, § 1670.

Every such instrument in writing shall, from time of filing same with register of deeds for record, impart notice to all persons of the contents thereof; and all subsequent purchasers and mortgagees shall be deemed to purchase with notice. *Ibid.*, § 1671.

No such instrument in writing is valid, except between the parties thereto, and such as have actual notice thereof, until it is deposited with register of deeds for record. *Ibid.*, § 1672.

Every letter of attorney, or other instrument containing a power to convey real estate as agent or attorney for owner thereof, or to execute, as agent or attorney for another, any instrument in writing conveying real estate or whereby real estate may be affected, shall be recorded as other instruments in writing, conveying or affecting real estate, are required to be recorded. *Ibid.*, § 1673.

Letters of attorney authorizing execution of deed or other instrument in writing, for the sale or conveyance of lands, tenements or hereditaments in this state, shall be recorded in office of register of deeds of county in which such lands, tenements or hereditaments are situated, previous to such sale, or the execution of such deed or other instrument of writing authorized by such power of attorney. *Ibid.*, § 1674.

No such letter of attorney, or other instrument, recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any

act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in same office in which the instrument containing the power is recorded. *Ibid.*, § 1675.

Every person who shall make, execute or deliver any deed or writing for the conveyance or assurance of lands, tenements or hereditaments, which he had previously, by deed or writing, sold, conveyed, mortgaged or assured, or covenanted to convey or assure to any other person, such first deed being outstanding and in force, and shall not in such second deed or writing recite or describe such former deed or writing, or the substance thereof, with intent to defraud, and every person who shall knowingly take or receive such second deed or writing, is guilty of misdemeanor. *Ibid.*, § 2589.

When deed of real property purports to be an absolute conveyance, but is intended to be defeasible on performance of certain conditions, such deed shall not be defeated or affected as against any person other than grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed, shall have been recorded in office of register of deeds of county where the lands lie. *Ibid.*, § 5195.

As between grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes that may be assessed thereon, if such land is conveyed between the first day of March and the first day of November, the grantee shall pay same, but if conveyed between the first day of November and the first day of March, the grantor shall pay them. *Ibid.*, § 9392.

927. Warranty Deed.

THIS INDENTURE, made this day of , A. D. 19 , between
of county, in the state of , of the first part, and of
county, in the state of , of the second part,

WITNESSETH, that said part of the first part, in consideration of the sum
of and dollars, the receipt whereof is hereby acknowledged, do
by these presents grant, bargain, sell and convey unto said part of the
second part, heirs and assigns, all the following-described real estate,
situated in the county of , and state of , to wit: [description]

TO HAVE AND TO HOLD THE SAME, together with all and singular the tene-
ments, hereditaments and appurtenances thereunto belonging or in anywise
appertaining, forever.

And said , for heirs, executors or administrators, do hereby
covenant, promise and agree, to and with said part of the second part,
that at the delivery of these presents lawfully seized in own right, of
an absolute and indefeasible estate of inheritance, in fee simple, of and in all
and singular the above granted and described premises, with the appurte-
nances; that the same are free, clear, discharged and unencumbered of and
from all former and other grants, titles, charges, estates, judgments, taxes,
assessments and encumbrances, of what nature and kind soever; and
that will warrant and forever defend the same unto said part of the
second part, heirs and assigns, against said part of the first part,
 heirs and all and every person or persons whomsoever, lawfully claim-
ing or to claim the same.

IN WITNESS WHEREOF, the said part of the first part ha hereunto
set hand , the day and year first above written.

[Signatures.]

Executed and delivered in presence of

[Signatures.]

928. Quitclaim Deed.

THIS INDENTURE, made this day of , 19 , between , of county, in the state of , of the first part, and , of county, in the state of , of the second part,

WITNESSETH, that said part of the first part, in consideration of the sum of and dollars, the receipt of which is hereby acknowledged, do by these presents, remise, release and quitclaim, unto said part of the second part, heirs and assigns, all the following-described real estate, situated in the county of , and state of , to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand , the day and year first above written.

[*Signatures.*]

Executed and delivered in presence of

[*Signatures.*]

929. Bond for a Deed.

KNOW ALL MEN BY THESE PRESENTS, that of county, in the state of , of the first part, held and firmly bound unto of county, in the state of , of the second part, in the sum of dollars.

THE CONDITION OF THIS OBLIGATION IS SUCH, that said part of the first part ha agreed to grant, sell and convey unto said part of the second part the following described real estate, situated in county and state of Kansas, to wit: [*description*] for the sum of dollars, to be paid as follows:

Now, if said part of the first part shall, on or before the day of , A. D. 19 , and upon full payment of said sum and sums of money, execute and deliver to said part of the second part a good and sufficient warranty deed, conveying an absolute and indefeasible estate, in fee simple, with the usual covenants, in and to said tract and parcel of land, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand , this day of , A. D. 19 .

[*Signatures.*]

929a. Grant of Patent Right for Lands.

WHEREAS, letters patent of the United States were granted to for , the said letters patent hearing date the day of , 19 , and being numbered .

AND WHEREAS, of , state of , is desirous of acquiring an interest therein:

Now, THEREFORE, , the said , in consideration of dollars, the receipt of which is hereby acknowledged, do hereby grant unto all the right, title and interest which have in the said invention and patent

within and throughout the _____, the said right to be held and enjoyed by the said _____, heirs and assigns, to the end of the term for which the said letters patent were granted, as fully and entirely as it would have been held by _____ had this grant not been made.

WITNESS _____ hand, at _____, this _____ day of _____, 19 _____.

[Signatures and seals.]

In presence of

[Signatures.]

NOTE.—Territorial grants of patent rights are required to be recorded in the United States patent office within three months after execution.

KENTUCKY.

Any interest in or claim to real estate may be disposed of by deed in writing. Statutes 1909, § 2043.

Unless a different purpose appear by express words or necessary inference, every estate in land created by deed, without words of inheritance, is a fee-simple or such other estate as the grantor had power to dispose of. *Ibid.*, § 2044.

When a deed shall be made to a person then dead, his heirs shall take, hold and enjoy the title to the estate so conveyed as if such deed had been made to such heirs by name. *Ibid.*, § 2045a.

A deed and warranty of land purporting to pass or assure a greater right or estate than the person can lawfully pass or assure, shall operate to convey or warrant so much of the right and estate as he can lawfully convey. *Ibid.*, § 2048.

When real estate is conveyed, and the consideration, or any part thereof, remains unpaid, the grantor shall not have a lien for the same against bona fide creditors and purchasers, unless it is stated in the deed what part of the consideration remains unpaid. *Ibid.*, § 2053.

A conveyance made by a tenant for life or years, purporting to grant a greater estate than he has, shall not work a forfeiture of his estate, but shall pass to grantee all the estate which such tenant could lawfully convey. *Ibid.*, § 2053a.

Owner may convey any interest in lands not in the adverse possession of another; but no estate of inheritance or freehold, or for a term of more than one year, in lands, shall be conveyed, unless by deed or will. *Ibid.*, § 2056.

Deeds of bargain and sale, deeds to stand seized to use, deeds of release and deeds of trust shall be held to vest the possession of the grantor in the grantee to the extent of the estate intended to be conveyed. *Ibid.*, § 2057.

Every deed of release shall be as effectual for the purposes therein expressed, without the execution of a lease, as if the same had been executed. *Ibid.*, § 2058.

A covenant by grantor in a deed, "that he will warrant the property hereby conveyed," or words of like import; or the words "with warranty," or "with general warranty," in any deed, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whatever. A covenant by a grantor, "that he will warrant specially the property thereby conveyed," or words of like import, or the words "with special warranty," in any deed, shall have the same effect, as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor and all persons claiming, or to claim by, through, or under him. *Ibid.*, § 2059.

No deed conveying any title to or interest in land, or lease of oil, gas, coal or mineral right and privilege, for a longer time than five years, shall be good against a purchaser for valuable consideration, not having had notice thereof, or any creditor, unless the same be lodged for record in the proper office, as prescribed by law, and the provisions of this section shall apply with like protection to the creditor of, or innocent purchaser from, the heir or devisee of the grantor. *Ibid.*, § 2060.

All deeds and other instruments of writing which are required by law to be recorded to be effectual against purchasers without notice, or creditors shall be recorded in the clerk's office of the court of the county in which the property conveyed, or the greater part thereof, shall be. But it shall be unlawful for any court clerk or deputy clerk to admit to record in such office any deed or conveyance of any interest in real estate equal to or greater than a life estate, unless such deed shall plainly specify and refer to the next immediate source from which the grantor or grantors therein derived title to the said real estate or the interest conveyed therein.

If such a source of title be a deed or other recorded writing, then the deed offered for record shall refer to such former deed or writing, and give the office book and page where recorded, and the date thereof, if dated. If the property or interest therein be obtained by inheritance or in any other way than by recorded instrument of writing, then the deed offered for record shall state clearly and accurately how and from whom the title thereto was obtained by the grantor or grantors.

And if the title to such property or interest conveyed be obtained from two or more sources, then the deed offered for record shall plainly specify and refer to each of said sources in the manner above set out, and shall show which part of said property, or interest therein, was obtained from each of said sources.

It shall be unlawful for any grantor to lodge for record, or for any county court clerk or deputy to receive and permit to be lodged for record, any deed that does not comply with the provisions of this section.

A grantor who lodges for record and a county court clerk, or deputy, who receives and permits to be lodged for record any deed contrary to the provisions of this section shall be fined not less than \$25 nor more than \$50 for each offense. *Ibid.*, § 2061.

No deed conveying a legal or equitable title to real estate shall be valid against a purchaser for valuable consideration, without notice thereof, or against creditors, until it is lodged for record. *Ibid.*, § 2062.

All bona fide deeds of trust or mortgage shall take effect in the order that the same shall be lodged for record. *Ibid.*, § 2063.

Any contract for the sale of land, or any interest therein, may be recorded in the county in which such lands are situated, in same offices and books in which deeds are recorded, and the record of all such contracts recorded shall, from time of lodging the same for record, be notice of such contracts to all persons. *Ibid.*, § 2070.

If a deed or power of attorney, written in any language other than the English is produced to the proper recording officer, and offered for record, and if the person offering the same produce a correct English translation thereof, to be filed in the office and recorded with the deed or power of attorney, it shall be the duty of the clerk to record in the proper book both the original and copy. *Ibid.*, § 2087.

No deed shall be held to be legally lodged for record until the tax be paid thereon. *Ibid.*, § 2091.

Powers of attorney to convey or release real property, or any interest therein, may be recorded in the proper office in the manner prescribed for recording conveyances. If the conveyance made under a power, required by law to be recorded or lodged for record, to make the same valid against creditors and purchasers, then the power must be lodged or recorded in like manner; and no such power so recorded shall be deemed to be revoked by

any act of the party by whom it was executed, except from the time when there shall be lodged for record in office in which the power is recorded a written revocation, executed in the manner prescribed for conveyances, or a memorandum of revocation may be made on the margin of the record thereof, which memorandum shall be signed by the party executing the same, and attested by the clerk. *Ibid.*, § 2069.

930. Warranty Deed.

THIS DEED, made between _____, of the first part, and _____, of the second part, WITNESSETH: That the said part _____ of the first part, in consideration of _____, the receipt of which is hereby acknowledged, do hereby sell, grant, and convey to the part _____ of the second part, _____ heirs and assigns, the following described property, lying and being in the _____, and bounded thus: [*herein insert description*].

TO HAVE AND TO HOLD the same, with all the appurtenances thereon, to the second part _____, _____ heirs and assigns forever, with covenant of "general warranty." And the said part _____ of the first part do further covenant with the said part _____ of the second part that he _____ seized of said land, and ha _____ a good, legal title to the same, and he _____ will warrant the title to the property hereby conveyed against taxes and all other liens and incumbrances.

WITNESS _____ hands, this _____ day of _____, 19 _____ .
[*Signature.*]

[*Signature.*]

931. Warranty Deed with Lien.

THIS DEED, between _____, of the first part, and _____, of the second part, WITNESSETH, that the said party of the first part, in consideration of _____, to secure which deferred payments a lien is hereby retained upon the property hereinafter described, do hereby sell, grant, and convey to the party of the second part, _____ heirs and assigns, the following described property, viz.: [*description*]:

TO HAVE AND TO HOLD the same, with all the appurtenances thereon, to the second party, _____ heirs and assigns forever, with covenant of "General Warranty."

IN TESTIMONY WHEREOF, witness our signatures, this _____ day of _____, 19 _____ .

[*Signatures.*]

LOUISIANA.

One in each parish Const., Art. 122, makes clerk of district court in each parish *ex-officio* recorder. Constitution and Revised Laws to 1902, inclusive, § 3065.

They shall have power within their several parishes to make conveyances and generally all contracts and instruments of writing. They shall also be register of conveyances. *Ibid.*, § 3066.

No conveyance of property by officers, until all taxes are paid; penalty for violation. See §§ 3615, 3616. *Ibid.*, §§ 3147, 3148.

Officers authorized to convey real estate shall not execute act, without production of receipt for all taxes. Penalty for violation. See §§ 2519, 2520. *Ibid.*, §§ 3615, 3616.

Hereafter neither recorders, throughout the state, nor other persons authorized to convey real estate by public act, shall pass or execute any act for the sale, transfer or exchange of any real estate unless the state, parish and municipal taxes due on the same for three years next preceding the passage of the act of transfer be first paid, to be shown by the tax collector's receipt or certificate to that purpose (as amended by Act 88 of 1888, p. 148). *Ibid.*, § 2519.

Recorders or other persons violating the provisions of the preceding section shall, upon conviction thereof, be fined for each violation. *Ibid.*, § 2520.

There shall be a register of conveyances for the Parish of Orleans. *Ibid.*, p. 1931, Art. 149 of Const.

MAINE.

A person owning real estate and having a right of entry into it, whether seized of it or not, may convey it or all his interest in it, by a deed to be recorded as hereinafter provided. Down trees lying on land at time of conveyance, are real estate and pass by the deed; but if they are peeled, or cut into wood, logs or other lumber, they are personal property, and the owner may remove them in a reasonable time thereafter. Carpets and carpeting, stoves and funnels belonging thereto, are not real estate and do not pass by a deed thereof. Revised Statutes of 1903, p. 657, § 1.

When a contingent remainder, executory devise, or estate in expectancy, is so limited to a person, that it will, in case of his death before the happening of such contingency, descend in fee simple to his heirs, he may, before it happens, convey it subject to the contingency. *Ibid.*, p. 657, § 3.

A person seized of land as a tenant in tail may convey it in fee simple. When a minor is so seized, his guardian, licensed to sell it for his support and education, or to invest the proceeds for his benefit, may convey it in fee simple. When land is owned by one person for life with vested remainder in tail in another, they may by a joint deed convey same in fee simple. Such conveyances bar estate tail and all remainders and reversions expectant thereon. *Ibid.*, p. 658, § 7.

A conveyance of a greater estate than he can lawfully convey, made by a tenant for life or years, will pass what estate he has, and will not work a forfeiture. *Ibid.*, p. 658, § 8.

A conveyance of land to a person for life and to his heirs in fee, or by words to that effect, vests an estate for life only in the first taker, and a fee simple in his heirs. *Ibid.*, p. 658, § 9.

No conveyance of an estate in fee simple, fee tail or for life, or lease for more than seven years, is effectual against any person, except grantor, his heirs and devisees, and persons having actual notice thereof, unless the deed is recorded as herein provided. Conveyances of the right, title or interest of grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title. *Ibid.*, p. 658, § 11.

A deed, purporting to convey an absolute estate in land, cannot be defeated by an instrument intended as a defeasance, as against any other person than the maker, his heirs and devisees, unless such instrument is recorded in the registry where the deed is recorded. *Ibid.*, p. 658, § 12.

There can be no estate created in lands greater than a tenancy at will, and no estate in them can be granted, assigned or surrendered, unless by some writing signed by the grantor, or maker, or his attorney. *Ibid.*, p. 658, § 13.

The title of a purchaser for valuable consideration, or a title derived from levy of an execution, cannot be defeated by a trust, unless the purchaser or creditor had notice thereof. When the instrument, creating or declaring it, is recorded in registry where land lies, that is to be regarded as such notice. *Ibid.*, p. 659, § 15.

A deed of release or quitclaim of the usual form conveys the estate, which the grantor has and can convey by a deed of any other form. *Ibid.*, p. 657, § 17.

Deeds executed by an authorized agent of a person or corporation in name of his principal, or in his own name for his principal, are in law the deeds of such principal. *Ibid.*, p. 659, § 18.

A deed may be recorded in the registry of deeds. *Ibid.*, p. 660, § 26.

If a deed, duly executed and delivered, is lost or destroyed before being recorded, the grantee or person claiming under him, may file a copy of it in the registry of deeds in the county where the land lies; and it shall have the same effect as a record for ninety days. *Ibid.*, p. 660, § 28.

If a deed conveying lands in more than one county is lost before being recorded in all, or if a deed is recorded in the wrong county or registry district and lost, a certified copy from a registry where it has been recorded, may be recorded in another county, or registry district, with the same effect as a record of the original. *Ibid.*, p. 660, § 29.

A person having an interest in real estate of which any prior grantee has an unrecorded deed or other evidence of title, may give the latter personal notice in writing to have the same recorded; and if he neglects to have it so recorded for thirty days, a justice of the supreme judicial court, in session or vacation, on complaint, may cause said grantee or his heirs to be brought before him for examination, and unless sufficient cause is shown for such neglect, may order such deed or other evidence of title to be recorded, and the cost paid by the respondent, together with the legal fees of the register for recording such deed or other evidence of title. *Ibid.*, pp. 600, 601, § 30.

Pews and rights in houses of public worship are real estate. Deeds of them, and levies by execution upon them may be recorded by clerk of town where the houses are situated, with same effect as if recorded in registry of deeds. *Ibid.*, p. 661, § 31.

No agreement that a building erected with the consent of the land-owner, by one not the owner of the land upon which it is erected, shall be and remain personal property, shall be effectual against any person, except the owner of such land, his heirs, devisees and persons having actual notice thereof, unless such agreement is in writing and signed by such land owner, or by some one duly authorized for that purpose, and recorded as deeds are required to be recorded under this chapter (chap. 75, pp. 657-661, §§ 1-32). *Ibid.*, p. 661, § 32.

Deeds of burial lots in any public cemetery may be recorded in the registry of deeds for the county or district where such cemetery is situated. *Ibid.*, p. 263, § 20.

Conveyances, in whatever form, made to the inhabitants of a county, or to its treasurer, or to a person or committee for its benefit, are as effectual as if made in its corporate name. *Ibid.*, p. 659, § 19.

The assignee of a grantee, or his executor or administrator, after eviction by an older and better title, may maintain an action on a covenant of seizin or freedom from encumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might have recovered on eviction, upon filing, at the first term, in court, for the use of his grantee, a release of the covenants of his deed and of all causes of action thereon. The prior grantee cannot, in such case, release the covenants of the first grantor to the prejudice of his grantee. *Ibid.*, pp. 741, 742, § 30.

Grantees may appear and defend in suits against their grantors, in which the real estate conveyed is attached. *Ibid.*, p. 742, § 31.

When it appears to the judge of probate having jurisdiction, that any deceased person has made a legal contract to convey real estate and was prevented by death from so doing, or that such deceased person, had made such a contract to convey an estate upon a condition, which in its nature could not be fully performed before his decease, and that in either case the person contracted with, or petitioner, has performed or is ready to perform the conditions required of him by the terms thereof, he may, on petition of such person, his heirs, assigns or legal representatives, authorize the executor or administrator, or special administrator of the deceased, or when there is

no executor or administrator, the guardian of the heirs of the deceased, to execute deeds to carry said contract into effect; and when such conveyance is made to an executor or administrator, he shall stand seized of such estate to the same uses as in case of real estate set off to him on execution. *Ibid.*, p. 652, § 15.

Before granting such authority, the judge shall cause due notice to be given to the heirs and all other parties interested, and require the person authorized to make conveyance, to give bond with sufficient sureties to account for whatever he receives therefor. *Ibid.*, p. 652, § 16.

No license granted under this chapter (chap. 73, pp. 649-654, §§1-30), except when otherwise provided, remains in force for more than one year from its date; but when that time has expired, a new license may be granted, with or without new notice, at the discretion of judge, for sale of all or part of same real estate upon filing new bond. *Ibid.*, p. 652, § 17.

When the real estate, for the sale of which license is necessary, lies in two or more counties, the supreme judicial or probate court, in either of said counties, may grant licenses for the sale of the whole, or any part thereof, in any other county. *Ibid.*, p. 652, § 19.

932. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of _____, paid by _____, the receipt whereof _____ do hereby acknowledge, do hereby give, grant, bargain, sell and convey, unto the said _____, heirs and assigns, forever, a certain lot or parcel of land. [*description*]

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said _____, heirs and assigns, to _____ and their use and behoof forever.

And _____ do covenant with the said grantee, _____ heirs or assigns, that _____ lawfully seized in fee of the premises, that they are free of all encumbrances; that _____ ha good right to sell and convey the same to the said grantee to hold as aforesaid; and that _____ and _____ heirs shall and will warrant and defend the same to the said grantee, _____ heirs and assigns forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the said _____, and _____, wife of the said _____, joining in this deed as grantor, and relinquishing and conveying _____ right by descent and all other rights in the above described premises, have hereunto set hand and seal this _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

933. Quitclaim Déed.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of _____, paid by _____, the receipt whereof _____ do hereby acknowledge, do hereby remise, release, bargain, sell and convey, and forever quitclaim unto the said _____, heirs and assigns forever. [*description*]

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging to the said _____, heirs and assigns forever.

And _____ do covenant with the said grantee, _____ heirs and assigns, that _____ will warrant and defend the premises, to _____ the said _____ heirs and

assigns forever, against the lawful claims and demands of all persons claiming by, through or under .

IN WITNESS WHEREOF, , the said , and , wife of the said , joining in this deed as grantor , and relinquishing and conveying all rights in the above described premises, have hereunto set hand and seal this day of , in the year of our Lord one thousand nine hundred and .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

934. Executor's and Trustee's Deed.

[When the Will Authorizes a Sale.]

KNOW ALL MEN BY THESE PRESENTS, that , of , in the county of , sole acting executor of the last will and testament of , late of , deceased, testate, by virtue of the authority to me given by the said , in his last will and testament, in capacity of executor as aforesaid, and in consideration of dollars, to paid by , of , the receipt whereof is hereby acknowledged, do hereby sell and convey unto the said , his heirs and assigns, the following described real estate, which was the property of the said , situated in , and bounded as follows: [description]

TO HAVE AND TO HOLD the above-granted premises unto the said , and his heirs and assigns forever. And , the said , in said capacity, do hereby covenant to and with the said , his heirs and assigns, that the lawful executor of the last will and testament of the said ; that have power under said will to sell as aforesaid; and that in making this conveyance, have in all respects, acted in pursuance of the authority granted in and by the said last will and testament.

IN WITNESS WHEREOF, , the said , in my said capacity of executor, as aforesaid, have hereunto set hand and seal, this day of , A. D. 19 .

Signed, sealed and delivered in presence of

[Signatures and seals.]

[Signatures.]

935. Sheriff's Deed.

KNOW ALL MEN BY THESE PRESENTS, that whereas I, , of , in the county of , and state of Maine, a deputy sheriff duly commissioned by , sheriff of said county of , by virtue of an execution, which issued on a judgment, recovered at a term of the court, holden at , within and for the county of , on the day of , A. D. 19 , by , of , in the county of , and state of , against , of , in the county of , and state of Maine, for the sum of dollars and cents, debt or damage, and dollars and cents, costs of said suit, did on the day of , A. D. 19 , take and seize all the right, title and interest which the said has or had on the day of , A. D. 19 , at o'clock and minutes in the noon, being the time when the same was attached on the original writ, in and to the following described real estate, to wit: [description]

Now, if after the payment of said _____, before or at the time the same shall become due, and at the request of the said _____, h _____ heirs, executors, administrators, or assigns, the said _____, h _____ heirs, executors, or administrators, shall make, execute, and deliver to said _____, h _____ heirs, executors, administrators or assigns, a good and sufficient deed of said real estate, clear of encumbrances, _____ then this obligation shall be void, otherwise remain in full force and virtue.

Said _____ to have possession of said premises until h _____ shall have failed to perform the condition of this bond.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

MARYLAND.

A power of attorney to execute a deed shall be executed as required in section 27 of article 21, title "Conveyancing." Public General Laws of 1904, Art. 10, § 30, p. 295.

Any person executing a deed conveying real estate, as agent or attorney for another, shall describe himself in and sign the deed as agent or attorney. *Ibid.*, Art. 21, § 27, p. 510.

In case any deed shall be executed, to whose validity recording is necessary by law, and it has not been recorded agreeably to law, without fraudulent intention of the party claiming under it, the court may, upon application of the party claiming under it, and upon such notice being given to the party making such deed, his heirs, devisees, executor or administrator, as the court may direct, and being satisfied that the party claiming under the deed has a fair and equitable claim to the premises therein mentioned to order and decree, without the appearance or hearing of defendant, that such deed shall be recorded; and when such deed is recorded, it shall, in pursuance of such decree, be taken and considered in all courts of law and equity against party making such deed, his heirs, devisees, executors, and administrators, in the same state, and to have same effect and consequences, as if recorded within the time prescribed by law; but such deed shall not destroy, or in any manner affect title of purchaser of same thing or premises in case of a purchase made after date of such deed, and without notice of such deed by the person making such after-purchase, whether such purchase be by contract or by deed recorded agreeably to law; nor shall such deed, though recorded as aforesaid, in any manner affect the creditors of the party making such deed, who may trust such party after the date of said deed. The provisions of this section apply to non-residents as well as to residents, and to infants and persons of unsound mind. *Ibid.*, Art. 16, § 33, p. 384.

Every deed conveying real estate, which by any other instrument or writing shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage, and the person for whose benefit such deed shall be made shall not have any benefit or advantage from the recording thereof, unless every instrument and writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage or conditional deed, be also therewith recorded. *Ibid.*, Art. 66, § 1, p. 1543.

No estate of inheritance or freehold, or any estate above seven years, shall pass or take effect unless the deed conveying the same shall be executed and recorded as herein provided. *Ibid.*, Art. 21, § 1, p. 502.

All deeds conveying real estate which shall contain the names of the grantor and grantee, or bargainor and bargainee, a consideration in cases where a consideration is necessary to the validity of a deed, and a description of the real estate sufficient to identify the same with reasonable certainty, and the interest or estate intended thereby to be conveyed, shall be

sufficient, if executed and recorded as herein required. *Ibid.*, Art. 21, § 9, p. 505.

Every deed conveying real estate shall be signed by the grantor or bargainor. *Ibid.*, Art. 21, § 10, p. 505.

No words of inheritance shall be necessary to create an estate in fee simple, but every conveyance of real estate shall pass a fee simple estate, unless a contrary intention shall appear by express terms or be necessarily implied therein. *Ibid.*, Art. 21, § 11, pp. 505, 506.

Word "grant," phrase "bargain and sell," in a deed, or any other words purporting to transfer the whole estate of grantor shall be construed to pass to grantee the whole interest and estate of grantor in the lands therein mentioned, unless there be limitations or reservations showing, by implication or otherwise, a different intent. *Ibid.*, Art. 21, § 12, p. 506.

Every deed of any of the interests or estates mentioned in the first section of this article shall be recorded within six months from its date, in the county or city in which the land affected by such deed lies; and where it lies in more than one county, or in the city of Baltimore and a county, it shall be recorded in all the counties and the said city in which such land lies. *Ibid.*, Art. 21, § 13, p. 506.

Every deed of real property, when recorded as herein directed, shall take effect as between the parties thereto from its date. *Ibid.*, Art. 21, § 14, p. 506.

No deed of real property shall be valid for the purpose of passing title unless recorded as herein directed. *Ibid.*, Art. 21, § 15, p. 507.

Where there are two or more deeds conveying the same lands or chattels real, the deed or deeds first recorded according to law shall be preferred, if made bona fide and upon good and valuable consideration. This section to apply to all deeds or conveyances to whose validity recording is necessary. *Ibid.*, Art. 21, § 16, p. 507.

Any deed or conveyance of or relating to land, required by law to be recorded, except deeds or conveyances by way of mortgages, may be recorded after the time herein prescribed; and when so recorded shall have, as against grantor, his heirs or executors, and against all purchasers with notice of such deed or conveyance, and against all creditors of such grantor and his heirs who shall become so after the recording of such deed or conveyance, the same validity and effect as if recorded within the time hereinbefore prescribed. *Ibid.*, Art. 21, § 19, p. 508.

When grantee, his heir or executor, in any deed or conveyance, shall take possession of the lands purporting to be conveyed thereby, such deed or conveyance, after being recorded (though not recorded within six months), shall have against all persons, from the time of taking possession as aforesaid, the same effect and validity, to all intents and purposes, as if the same had been recorded in proper time; nothing herein, however, to affect in any manner the preferences and priorities declared and given in section 16 of this article. *Ibid.*, Art. 21, § 20, p. 508.

But as against all creditors who have become so before the recording of such deed or conveyance, and without notice of existence thereof, it shall have validity and effect only as a contract for the conveyance or assurance of the estate, interest or use, purported by such deed or conveyance to be conveyed or assured. *Ibid.*, Art. 21, § 21, p. 509.

Every power of attorney authorizing an agent or attorney to sell and convey real estate shall be recorded with the deed executed in pursuance of such power of attorney. *Ibid.*, Art. 21, § 25, p. 510.

Such power of attorney shall be deemed to be revoked when the instrument containing the revocation is recorded in the office in which the deed should properly be recorded. *Ibid.*, Art. 21, § 26, p. 510.

Every bond, writing obligatory or contract for the conveyance of real estate, or any interest or estate of, in, or relating to real estate, and every bond, writing obligatory or contract for the leasing and demising for any

term of years, of real estate, may be executed and recorded in same manner as deeds of real estate are required by this article to be executed and recorded, and as if such bonds, writings obligatory and contracts were deeds as aforesaid; and a certified copy of the record of such bond, writing obligatory or contract shall be received as evidence of the same, as fully as a like copy of the record of any such deed duly executed and recorded in manner aforesaid would be evidence of such deed. Ibid., Art. 21, § 28, pp. 510-511.

The following forms shall be sufficient to convey real property:

937. Form of a Deed Conveying a Fee Simple in Real Estate.

THIS DEED, made this day of , in the year , by me [*here insert the name of the grantor*], WITNESSETH, that in consideration of [*here insert consideration*], I, the said , do grant unto [*here insert the name of grantee*], all that [*here describe the property*].

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 52, p. 517.

938. Form Conveying Estate for life.

THIS DEED, made this day of , in the year , by me, , WITNESSETH, that in consideration of , I, the said , do grant unto , to hold during his life and no longer.

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 54, p. 518.

939. Form of Deed of Trust to Secure Debts, Indemnify Sureties, or Other Purposes.

THIS DEED, made this day of , in the year , by me, , WITNESSETH, that whereas [*here insert the consideration for making the deed*], I, the said , do grant unto , as trustee, the following property [*here describe the property*], in trust for the following purposes [*here insert the purposes of the trust, and any covenant that may be agreed upon*].

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 55, p. 518.

940. Form of Sheriff or Other Officer's Deeds.

THIS DEED, made this day of , in the year , by me, , sheriff of county, Maryland, WITNESSETH, that by virtue of an execution issued out of [*here insert the style of court*], and dated day of , in the year , in the case of vs. , I, the said , as sheriff of said county, have sold to , the following property [*here describe*

property]. Now, therefore, I, the said _____, do grant unto the said _____, all the right and title of _____, in and to said hereinbefore described property.

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 56, pp. 518, 519.

941. Form of Trustee's Deed Under a Decree.

THIS DEED, made this _____ day of _____, in the year _____, by me, _____, trustee, WITNESSETH, whereas, by a decree of [*here insert style of court*], passed on [*here insert day of decree*], in the case _____ vs. _____, I, the said _____, was appointed trustee to sell the land decreed to be sold, and have sold the same to _____, who has fully paid the purchase money therefor. Now, therefore, in consideration of the premises, I, the said _____, do grant unto _____ all the right and title of all the parties to the aforesaid cause, in and to [*describe property*].

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 57, p. 519.

942. Form of Executor's Deed.

THIS DEED, made this _____ day of _____, in the year _____, WITNESSETH, that I, _____, executor of the last will and testament of _____ late of _____ county, deceased, under a power in said will contained, in consideration of the sum of _____, have bargained and sold to _____, all that parcel of land [*here describe the land as described in the report of the executor to the court*].

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 59, p. 520.

The foregoing forms, or forms to like effect, shall be sufficient; and any covenant, limitation, restriction or proviso allowed by law may be added, annexed to or introduced with the foregoing forms. Ibid., Art. 21, § 64, p. 521.

Any other forms conforming to the rules hereinbefore laid down, or to the rules of law, shall be sufficient. Ibid., Art. 21, § 65, p. 521.

When in a deed conveying real estate, the words "the said covenants" are used, such words shall have the same effect as if the covenant was expressed to be by the covenantor for himself, his heirs, devisees and personal representatives, and shall be deemed to be with grantee in the deed, his heirs, devisees and personal representatives and assigns. Ibid., Art., 21, § 70, p. 522.

A covenant by grantor in a deed conveying real estate, "that he will warrant generally the property hereby conveyed," shall have same effect as if grantor had covenanted that he, his heirs, devisees* and personal representatives, will forever warrant the said property unto the grantee, his heirs, devisees and assigns, against the claims and demands of all persons whomsoever. Ibid., Art. 21, § 71, pp. 522, 523.

* So in original.

A covenant by grantor in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," shall have same effect as if grantor had covenanted that he, his heirs, devisees and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, devisees and personal representatives and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through or under him. *Ibid.*, Art. 21, § 72, p. 523.

A covenant by grantor in a deed for land, "that he is seized of the land hereby conveyed," shall have same effect as if grantor had covenanted that the said grantor at the time of the execution and delivery of the said deed is and stands lawfully seized of, in and to the same. *Ibid.*, Art. 21, § 73, p. 523.

A covenant by grantor, in a deed for land, "that he has the right to convey said land," shall have same effect as if grantor had covenanted that he has good right, full power and absolute authority to convey the said land unto the grantee in said deed, in the manner in which the same is conveyed, or intended so to be, by the deed, according to its true intent. *Ibid.*, Art. 21, § 74, p. 523.

A covenant by grantor in a deed for land "that the said (the grantee) shall quietly enjoy said land," shall have same effect that* if he had covenanted that the said (the grantee), his heirs and assigns, might at any and all times thereafter peaceably and quietly enter upon, and have, hold and enjoy the land conveyed by the deed, or intended so to be conveyed, with all the rights, privileges and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his or their use and benefit, without any eviction, interruption, suit, claim or demand whatever, by the said (the grantor), his heirs or assigns, or any other person or persons whatever. *Ibid.*, Art. 21, § 75, p. 523.

A covenant by a grantor in a deed for land, "that he has done no act to encumber said land," shall be construed and have same effect as if he had covenanted that he had not done or executed, or knowingly suffered any act, deed or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected or incumbered in title, estate or otherwise. *Ibid.*, Art. 21, § 76, p. 524.

A covenant by grantor, in a deed for land, "that he will execute such further assurances of said land as may be requisite," shall have same effect as if he had covenanted that he, the grantor, his heirs or personal representatives, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises hereby conveyed, or intended so to be, unto the grantee, his heirs and assigns, in manner aforesaid, as, by the grantee, his heirs and assigns, or his or their counsel, learned in the law, shall be reasonably devised, advised or required. *Ibid.*, Art. 21, § 77, p. 524.

All deeds of conveyance duly executed and recorded according to law, among the land records in any county in State, by executors of the last will and testament, executed with the formalities required for the passing of real estate by the laws of State of Maryland, or any non-resident testator, conveying lands lying in said county, shall be as valid and effectual in law and equity as if made by executors under last will and testament, duly executed and recorded in office of register of wills in State, for lands lying therein, and whose sales of real estate under authority of said will were duly made and reported to and ratified by an orphans' court in State, in case an authenticated copy of said last will and testament is filed and recorded in office of register of wills of county where the lands lie, and in case full authority was given by said last will and testament to executors to sell and convey said real estate. *Ibid.*, Art. 21, § 79, pp. 524, 525.

* So in original.

All gifts, grants or conveyances of land in State, binding on any street or highway, or when any street or highway shall be one or more of the lines thereof, shall be construed to pass to the donee or grantee therein, all the right, title and interest of the donor or grantor of said land, to the centre of the street or highway on which the same is located or binding as aforesaid, unless donor or grantor shall in express terms in the writing by which the gift or conveyance is made reserve to himself all the right, title and interest to said street or highway. Ibid., Art. 21, § 92, p. 529.

Executor or administrator, including administrator *de bonis non*, of person who shall have made sale of real estate, and have died before receiving purchase money, or conveying same, may convey said real estate to purchaser, and his deed shall be good and valid in law, and shall convey all the right, title, claim and interest of such deceased person in such real estate as effectually as the deed of the party so dying would have conveyed the same: provided, the executor or administrator of the person so denying shall satisfy the orphans' court granting him administration that the purchaser has paid the full amount of the purchase money. Ibid., Art. 93, § 80, p. 1982.

The provisions of foregoing section shall extend to all cases where administration may have been granted by the proper authority in District of Columbia; and in all such cases the application to secure such deed shall be made to the orphans' court of city or county where the land sought to be conveyed is situate. Ibid., Art. 93, § 81, p. 1982.

943. Fee Simple Deed — City or County.

THIS DEED, made this day of , in the year one thousand nine hundred and , by ,

WITNESSETH, that in consideration of , the said do grant and convey unto , heirs and assigns, in fee simple, all situate, lying and being in , and described as follows, that is to say: Beginning for the [*description*]

TOGETHER with the buildings and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in anywise appertaining.

TO HAVE AND TO HOLD and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said in fee simple.

And the said hereby covenant that he will warrant specially the property hereby granted and conveyed, and that he will execute such further assurances of said as may be requisite.

WITNESS the hand and seal of said grantor .

Test:

[*Signatures and seals.*]

944. Deed of Quitclaim — City or County.

THIS DEED, made this day of , in the year nineteen hundred , by , of , in the state of Maryland.

WHEREAS, , late of , deceased, has, by h last will and testament, dated , duly admitted to probate by the orphans' court of said , and recorded in the office of the register of wills for said in wills, liber , No. , folio , etc., devised and bequeathed all h estate to for h life, with the remainder after h death to ,

provided, however, that the said _____, on the death of the said _____, should first be paid the sum of _____ dollars therefrom; and whereas the executors of said last will and testament have by their account passed in said orphans' court, distributed the property under said last will to the life tenant, with remainder to the said _____, subject to the payment to the said _____, of the said sum of _____ dollars, on the death of the said _____; and whereas the said _____, the life tenant in said last will named, has departed this life, and the said _____ being desirous of retaining in h _____ the sole right and title to the aforesaid property, free, clear and discharged from the said charge of _____ dollars, directed by said last will to be paid therefrom, has fully satisfied and paid to the said _____ the said sum; and whereas the said _____ acknowledged the receipt of said sum, and is desirous of releasing the said property and estate in said will mentioned from all liability or charge for the payment of said legacy;

Now, THEREFORE, this deed witnesseth that, for and in consideration of the premises, and of the said sum of _____ dollars, the said _____ do hereby grant, convey, assign, release and quitclaim upon the said _____, all h _____ right, title, interest and estate whatsoever, in law or in equity, in, to or over any and all the estate or property, real or personal, of which the said _____ died seized or possessed.

AS WITNESS _____ hand and seal _____, the day and year first above written.

Test: _____ [Signatures and seals.]

MASSACHUSETTS.

A deed which is executed and delivered by the person, or by the attorney of the person, who has authority therefor shall, subject to the limitations of section four, be sufficient, without any other act or ceremony, to convey land. Revised Laws of 1902, p. 1221, § 1 of chap. 127.

A deed of quit-claim and release shall be sufficient to convey all the estate which could lawfully be conveyed by a deed of bargain and sale. Ibid., p. 1222, § 2.

An estate or interest in land which is created without an instrument in writing signed by grantor or by his attorney shall have the force and effect of an estate at will only, and no estate or interest in land shall be assigned, granted or surrendered unless by such writing or by operation of law. Ibid., p. 1222, § 3.

A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section fifteen of chapter twenty-two, is recorded in the register of deeds for the county or district in which the land to which it relates is situated. Ibid., p. 1222, § 4.

The record of a deed, lease, power of attorney or other instrument, purporting to affect the title to land, shall be conclusive evidence of delivery of such instrument, in favor of purchasers for value without notice who claim thereunder. Ibid., p. 1222, § 5.

A conveyance of land, if otherwise valid, shall, notwithstanding disseisin or adverse possession, be as effectual to transfer the title as if the grantor were actually seized and possessed of said land, and shall vest in grantee the rights of entry and of action for recovery of the estate incident to such title. Ibid., p. 1222, § 6.

A person seized of land as tenant in tail may convey such land in fee simple by a deed in common form, as if he were seized thereof in fee simple;

and such conveyance shall bar the estate tail and all remainders and reversions expectant thereon. *Ibid.*, p. 1226, § 24.

If land is held by one person for life with a vested remainder in tail in another, the tenant for life and the remainder man may convey such land in fee simple by their deed or deeds in common form, as if the remainder had been limited in fee simple; and such deed or deeds shall bar the estate tail and all remainders and reversions expectant thereon. *Ibid.*, p. 1226, § 25.

Equitable estates tail, in possession or remainder, and all remainders and reversions expectant thereon, may be barred in the same manner as legal estates tail and the remainders and reversions expectant thereon. *Ibid.*, p. 1226, § 26.

The person to whom an equitable fee simple is conveyed pursuant to the preceding section shall, upon request therefor, be entitled to a conveyance of the outstanding legal estate from the person in whom such legal estate is then or thereafter vested in trust. *Ibid.*, p. 1226, § 27.

If a deed purports to contain an absolute conveyance of land, but is made defeasible by a deed, bond or other instrument, the original deed shall not be thereby affected, as against any person other than the maker of the instrument of defeasance and his heirs and devisees and persons having actual notice of it, unless such instrument is recorded in the registry of deeds for the county or district in which the land to which it relates is situated. *Ibid.*, p. 1227, § 33.

If land is demised for the term of one hundred years or more, the term shall, so long as fifty years thereof remain unexpired, be regarded as an estate in fee simple as to everything concerning the descent and devise thereof upon the decease of the owner, the sale thereof by executors, administrators, guardians or trustees, and the levy of execution thereon; and whoever holds as lessee or assignee under such a lease shall, so long as fifty years of the term remain unexpired, be regarded as a freeholder for all purposes. *Ibid.*, p. 1258, § 1 of chap. 129.

A conveyance by a tenant for life or years which purports to grant a greater estate than he possesses or can lawfully convey shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant can lawfully convey. *Ibid.*, p. 1268, § 7 of chap. 134.

If real property, upon which any encumbrance exists, is conveyed by deed the grantor, in whatever capacity he may act, shall before the consideration is paid, by exception in the deed or otherwise, make known to grantee the existence and nature of such prior encumbrance so far as he has knowledge thereof. *Ibid.*, p. 1271, § 18.

Whoever conveys real property by a deed which contains a covenant that it is free from all encumbrances shall, if it appears by a public record that an actual or apparent encumbrance, known or unknown to him, exists thereon, be liable in an action of contract to the grantee, his heirs, executors, administrators or assigns, for all damages sustained in removing same. *Ibid.*, p. 1271, § 19.

Every deed and other instrument required to be recorded in the registry of deeds shall be recorded in the registry of the county or district in which the land lies to which such deed or instrument relates; and in all things relating to the register or registry of deeds, each district therefor shall be deemed to be a county. *Ibid.*, p. 350, § 14 of chap. 22.

If a deed or other writing affecting land lying in more than one county or district has been recorded in one county or district in which a part of the land lies, an office copy thereof recorded in any other county or district in which another part of the land lies, and in which the original has not been recorded, shall have the same effect as a record of the original instrument. *Ibid.*, p. 350, § 15.

Every cemetery corporation shall regularly keep books in which it shall enter all conveyances of burial lots within said cemetery and all instru-

ments of contract relating to conveyances of such lots. Such records shall have the same effect as if made in the registry of deeds for the county or district in which such cemetery is situated, and no other record shall be necessary. *Ibid.*, pp. 690, 691, § 3 of chap. 78.

The collector of taxes shall execute and deliver to the purchaser upon a sale for taxes a deed of the land, which shall state the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted according to law. The deed shall convey, subject to the right of redemption, all the right and interest which the owner had in the land when it was taken for his taxes, and the premises conveyed shall also be subject to and have the benefit of all covenants and restrictions lawfully existing in, upon or over said land or appurtenant thereto when so taken. Such deed shall not be valid unless recorded within thirty days after the sale. *Ibid.*, § 43 of chap. 13, as amended by Act of March 17, 1905, Supplement of 1902-1906, p. 81.

945. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of _____, paid by _____, the _____ receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said _____, [*here describe premises*].

TO HAVE AND TO HOLD the granted premises, with all the privileges and appurtenances thereto belonging, to the said _____ and _____ heirs and assigns, to their own use and behoof forever.

And _____ do hereby, for _____ and _____ heirs, executors, and administrators, covenant with the said _____ grantee, and _____ heirs and assigns, that _____ lawfully seized in fee simple of the granted premises; that they are free from all incumbrances _____; that _____ have good right to sell and convey the same as aforesaid; and that _____ will and _____ heirs, executors, and administrators shall warrant and defend the same to the said grantee and _____ heirs and assigns, forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid, _____ do hereby release unto the grantee and _____ heirs and assigns, all right of or to both dower and homestead in the granted premises, and all other rights and interests thereon.

IN WITNESS WHEREOF, the said _____ hereto set _____ hand and seal, this _____ day of _____, in the year one thousand nine hundred and _____.

Signed and sealed in presence of _____

946. Quitclaim Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of _____, paid by _____, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said _____, [*here describe premises*].

TO HAVE AND TO HOLD the granted premises, with all the privileges and appurtenances thereto belonging, to the said _____, and _____ heirs and assigns, to their own use and behoof forever.

AND _____ do hereby, for _____ and _____ heirs, executors, and administrators, covenant with the said grantee and _____ heirs and assigns, that the

granted premises are free from all incumbrances made or suffered by , and that will and heirs, executors, and administrators shall, warrant and defend the same to the said grantee and heirs and assigns, forever, against the lawful claims and demands of all persons claiming by, through, or under , but against none other.

AND for the consideration aforesaid, do hereby release, unto the grantee and heirs and assigns, all right of or to both dower and homestead in the granted premises, and all other rights and interests therein.

IN WITNESS WHEREOF, the said hereto set hand and seal, this day of , in the year one thousand nine hundred and .

Signed and sealed in presence of

947. Trustee's Deed Under a Decree.

(Prescribed by art. 21, § 56, of the Public General Statutes.)

This deed, made this day of , in the year , by me, trustee,

WITNESSETH:

WHEREAS, by a decree of [*here insert style of court*], passed on [*here insert day of decree*], in the case of against , I, the said , was appointed trustee to sell the land decreed to be sold, and have sold the same to , who has fully paid the purchase money therefor;

NOW, THEREFORE, in consideration of the premises, I, the said , do grant unto , all the right and title of all the parties to the aforesaid cause in and to [*describe property*].

WITNESS my hand and seal.

A. B. [SEAL.]

Test:

948. Executor's Deed.

This deed, made this day of , in the year , county, deceased, under a power in the said will contained, in consideration of the sum of dollars, have bound and sold to , all that parcel of land [*here describe the land as described in the report of the executor, to the court*].

WITNESS my hand and seal.

A. B. [SEAL.]

Test:

949. Collector's Deed, Part of Estab.

COMMONWEALTH OF MASSACHUSETTS.

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME, I, , collector of taxes for the of , in the county of , and commonwealth of Massachusetts, send greeting:

WHEREAS, the assessors of taxes of said , of , in the lists of assessments for taxes which they committed to me to collect for the year 19 , duly assessed , as owner of the land in said , which is hereinafter described, the sum of dollars and cents, for state, county and taxes thereon; and whereas on the day of , 19 , I served on said person in the manner required by law a summons, and ten days therefrom, to wit: on the day of , 19 , I duly demanded of said the payment of said taxes so as aforesaid assessed on said

land, and the same were not paid; and whereas, after the expiration of fourteen days from the time of demanding payment of said taxes as aforesaid, the same still remaining unpaid, I duly advertised that the smallest undivided part of said land sufficient to satisfy said taxes with interest and all legal costs and charges, or the whole of said land if no person offers to take an undivided part thereof, would be sold by public auction for the payment of said taxes with interest, and all legal costs and charges, on the day of , 19 , at o'clock in the noon at the , in said , by publishing an advertisement thereof containing also a substantially accurate description, and the name of the owner of said land, and the amount of the taxes so as aforesaid assessed thereon, in the , a newspaper published in , in the county where said land lies, three weeks successively, the last publication whereof was one week before the time appointed for the sale, and by posting the said advertisement in public and convenient places in said , to wit: the , three weeks before the time appointed for said sale; and whereas, said taxes so as aforesaid assessed on said land were not paid, I proceeded, at the time and place appointed as aforesaid for the sale, to sell said land by public auction for the discharge and payment of said taxes thereon with interest and said legal costs and charges, and no person appeared and bid for an undivided part, or for the whole of the land thus offered for sale an amount equal to the said taxes, interest, costs and charges, and I thereupon at said time and place appointed for said sale adjourned said sale until , the day of , A. D. 19 , at o'clock in the noon, at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects and for the same cause I adjourned said sale, , and then and there made public proclamation of said adjournments; and at the time and place so fixed and proclaimed for making said sale on each of the several days, I proceeded to offer for sale said land by public auction for the payment of said taxes, interest, costs and charges, and no person appeared, at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, interest, costs and charges, until on the day of , A. D. 19 , the time and place so fixed for said sale by the last of the said adjournments, I proceeded again to offer for sale by public auction for the payment of said taxes, interest, costs and charges, the smallest undivided part of said land sufficient for the payment of said taxes with interest and legal costs and charges, and , of , in the county of , and state of , offered at said auction to take one undivided part of said land and to pay therefor the amount of said taxes with interest and the legal costs and charges, and that being the smallest undivided part of said land offered to be taken for the payment of said taxes, interest, costs and charges one undivided part of said land was struck off to said .

THEREFORE, KNOW YE, that I, the said , collector of taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the said sum of dollars and cents to me paid by said , the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto , the said , one undivided part of the follow-

ing-described land, being the land taxed as aforesaid, to wit: [*description*]
Said premises are conveyed subject to, and including all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto.

TO HAVE AND TO HOLD the same to the said , h heirs and assigns, to and their use and behoof forever, subject to the right of redemption by any person legally entitled to redeem the same.

AND I, the said collector, do covenant with the said , h heirs and assigns, that the sale aforesaid has in all particulars been conducted according to law.

IN WITNESS WHEREOF, I, the said , collector as aforesaid, have hereunto set my hand and seal this day of , in the year of our Lord one thousand nine hundred and .

, Collector of taxes for the of .

Signed sealed and delivered in presence of

[Signatures.]

950. Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS, that holden and stand firmly bound unto in the sum of dollars, to the payment of which to the said obligee or executors, administrators or assigns, hereby bind sel heirs, executors and administrators.

THE CONDITION of this obligation is such that whereas the said obligor ha agreed to sell and convey unto the said obligee a certain parcel of real estate situated , and bounded as follows, namely: [*description*]
The same to be conveyed by a good and sufficient deed of the said obligor conveying a good and clear title to the same, free from all incumbrances .

AND WHEREAS for such deed and conveyance it is agreed that the said obligee shall pay the sum of dollars, of which dollars have been paid this day, dollars are to be paid in cash upon the delivery of said deed, and the remainder is to be paid by the note of the said obligee , dated , bearing interest at per cent. per annum, payable semi-annually, and secured by a power of sale mortgage, in the usual form, upon the said premises, such note to be payable .

Now, THEREFORE, if the said obligor shall, upon tender by the said obligee of the said aforesaid cash, note and mortgage at any time within from this date, deliver unto the said obligee a good and sufficient deed as aforesaid, then this obligation shall be void, otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

Signed and sealed in presence of

[Signatures.]

MICHIGAN.

Conveyances of lands or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, or by his lawful agent or attorney, and recorded as directed by this chapter (chap. 241, §§ 8956-9063). Compiled Laws of 1897, § 8956.

A deed of quit-claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale. *Ibid.*, § 8957.

A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. *Ibid.*, § 8958.

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. *Ibid.*, § 8959.

No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely. *Ibid.*, § 8961.

Every conveyance of real estate within state, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. *Ibid.*, § 8988.

Deeds of pews or slips in any church, may be recorded by the clerk of the township in which such church is situated, or by the clerk of the society or proprietors, if incorporated or legally organized. *Ibid.*, § 8989.

The record, or a transcript of the record, of conveyances and other instruments authorized by law to be recorded, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within state without further proof thereof. *Ibid.*, § 8990.

When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the registry of deeds of the county where the lands lie. *Ibid.*, § 8991.

The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease, or other conditional estate. *Ibid.*, § 8993.

Every letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, may be recorded in the registry of deeds of any county in which the lands to which such power or contract relates may be situated; and the record thereof, when recorded, or a transcript of such record duly certified, may be read in evidence in same manner, and with like effect, as a conveyance recorded in such county. *Ibid.*, § 8995.

A deed is to be recorded in the office of the register of deeds of the county where the lands lie. *Ibid.*, § 8978.

No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded. *Ibid.*, § 8998.

Any conveyance of lands worded in substance as follows:

951. Warranty Deed, Statutory Form.

"A. B. conveys and warrants to C. D. [*here describe the premises*] for the sum of [*here insert the consideration*]," the said conveyance being dated and duly signed by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives, that he is

lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all encumbrances, and that he will warrant and defend the title to the same against all lawful claims. *Ibid.*, § 9014.

Any conveyance of lands worded in substance as follows:

952. Quitclaim Deed, Statutory Form.

"A. B. quitclaims to C. D. [*here describe the premises*] for the sum of [*here insert the consideration*]," the said conveyance being duly signed by the grantor, shall be deemed to be a good and sufficient conveyance in quitclaim to the grantee, his heirs and assigns. *Ibid.*, § 9015.

It is not necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance; and if it be the intention of the grantor to convey any lesser estate, it shall be so expressed in the deed. *Ibid.*, § 9016. *

Whenever any grantor who conveys real estate within state, has in his possession any unrecorded deed or deeds through or under which he derived title, of any lands by him so conveyed, it shall be his duty on the written request of his grantee or any subsequent grantee, to cause such deed or deeds to be recorded in the office of the register of deeds of the proper county, or cause the same to be delivered to such grantee demanding the same for the purpose of recording within twenty days from the time when such written request shall have been served upon him. *Ibid.*, § 9029.

If such grantor shall neglect or refuse to record such deed or deliver the same* to such grantee after having been requested so to do, as provided in preceding section, within the time above limited, he shall be liable to said grantee, his heirs, representatives or assigns, in penal sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal to person or persons entitled thereto, to be recovered in an action on the case with costs of suit. *Ibid.*, § 9030.

Where a deed or other instrument affecting the title to real estate, is executed, affecting land in two or more counties, and when the same is duly recorded in office of register of deeds in any county in which any part of the lands to be affected thereby is situate, and such instrument is lost or destroyed before being recorded in other counties in which land affected thereby shall be situate, any party or parties, interested in such lost deed or other writing, or in the real estate the title to which is affected thereby, may apply to the judge of probate court of county where such real estate may be situate in which the record shall not have been made, for an order to record a duly certified transcript of such deed or other instrument, in such county, and thereupon such judge of probate shall give notice by publication, in accordance with the practice of such court, for three successive weeks, of such application, and of time and place when and where a hearing will be had thereon, and on such hearing, if it shall appear to such probate judge that such deed or other instrument was duly executed and has been legally recorded in any county in this state, and that the same was lost or destroyed before being recorded in other counties in which real estate to be affected thereby was situate, such probate judge shall make an order authorizing a certified transcript of such deed or other writing, to be recorded in said county, and shall annex a duly certified copy of such order to such copy of such deed or other instrument, and such order authorizing a record thereof, may be recorded in the office of the register of deeds of the county in which such order shall be made, and such record shall have same force and effect as the record of the original would have had, had the same been recorded before being lost or destroyed. *Ibid.*, § 9031.

The recording of a contract for the sale of land or any interest therein in the office of the register of deeds of the county where the lands lie, shall have the same force and effect as to subsequent encumbrancers and purchasers, as the recording of deeds. *Ibid.*, §§ 9035, 9038.

When vendor named in said contract has ceased in law to be bound by its provisions, and is entitled to a release therefrom, the vendee named in said contract, his heirs or assigns, shall, when requested by said vendor, execute a discharge of said contract, in the same manner as now provided by law for the discharge of mortgages, and for a refusal to so discharge the same he shall be subject to same penalties as are now provided by law for a refusal to discharge a mortgage after the same has been fully paid. No contract for the sale of lands shall be deemed invalid for want of recording. *Ibid.*, § 9039.

953. Warranty Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the first part, and , of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, alien and confirm unto the said part of the second part, and heirs and assigns, forever, all certain piece or parcel of land situate and being in the of , county of , and state of Michigan, and described as follows, to wit: [*description*] together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To HAVE AND TO HOLD the said premises, as herein described, with the appurtenances, unto the said part of the second part, and to heirs and assigns forever.

And the said , part of the first part, for sel , h heirs, executors and administrators do covenant, grant, bargain and agree to and with the said part of the second part, heirs and assigns, that at the time of the ensembling and delivery of these presents well seized of the above-granted premises in fee simple; that they are free from all encumbrances whatever, and that will, and heirs, executors, and administrators shall warrant and defend the same against all lawful claims whatsoever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

954. Quitclaim Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred , between , of the first part, and , of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of , to in hand paid by the said part of the second

part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release and forever quitclaim unto the said part of the second part, and to heirs and assigns, forever, all certain piece or parcel of land, situated in the of , in county, and state of Michigan, known and described as follows:

[*description*]

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; TO HAVE AND TO HOLD the said to the said part of the second part, and to heirs and assigns, to the sole and only proper use, benefit and behoof of the said part of the second part, heirs and assigns, forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

955. Contract for Sale of Land, With Right to Vendee to Remove Timber.

THIS AGREEMENT, made this day of , A. D. one thousand nine hundred and , between , of the first part, and , of the second part,

WITNESSETH, that the part of the first part, at the request of the part of the second part, and in consideration of the money to be paid and the covenants as herein expressed to be performed by the part of the second part, hereby agree to sell to the part of the second part, all certain lot and parcel of land situate in the of , in the county of , state of , known and distinguished as follows, to wit: [*description*] with all the privileges and appurtenances thereunto belonging, and to convey to said part of the second part, by a good and sufficient deed in law, free from encumbrance, the above described tract of land, upon the full performance by the part of the second part of the following conditions, but not otherwise:

That is to say, FIRST.—That the part of the second part hereby agree to pay therefor the sum of dollars, of which sum dollars is now paid to the part of the first part, the receipt of which is hereby acknowledged; and further agree to pay the remainder in accordance with the tenor of certain promissory notes given by the part of the second part to the part of the first part, and bearing even date herewith, with interest at the rate of per cent. per annum on the amount unpaid, payable annually, to wit:

One note for [*describe notes*].

But it is hereby agreed that in case of default being made by said part of the second part in any portion of the payments above mentioned, then all such payments, or portions thereof, so in default shall draw interest after maturity at the rate of seven per cent. per annum; payable semi-annually; all of said payments are to be made to the part of the first part, or to authorized agent, at

SECOND.—That the part of the second part shall, from time to time, and in due season, pay all the legal taxes which may hereafter become due on said premises; and in case there shall be on the first day of April in any year any taxes due and unpaid on said land, and the part of the first part shall pay said taxes, the said part of the second part hereby agree to refund, on or before the delivery of the deed, the taxes that may be so paid, with interest, together with dollars annually as compensation to the part of the first part for attending to such payment.

THIRD.—That the part of the second part shall pay each and every of the said promissory notes at the time they severally become due and payable, according to the tenor and effect thereof. And it is expressly stipulated and agreed that the time of the payment of said notes is of the essence of this agreement, and that if default in the payment of either of said notes at maturity shall be made, the said part of the first part may, at option, at any time after the happening of such default and before receiving another payment, declare a forfeiture of the rights of the part of the second part, under this agreement, either by notice to be given to the part of the second part, or to any person who may be found in the possession or occupancy of said premises, or any part thereof, or by written notice to be deposited in any post-office directed to the said part of the second part, at , in the county of , and state of , and thirty days after the time of giving or mailing such notice, all the rights of the part of the second part under this agreement either at law or in equity, shall wholly and forever cease and determine (unless shall within said thirty days have paid all arrears that may then be due), and thereupon such of said notes as remain unpaid, shall (excepting as is hereinafter provided) be void, and shall be delivered up to the part of the second part on demand made by therefor, at the office of the part of the first part, in , where the same are made payable; but the part of the first part shall not be bound to refund any moneys which may have been paid upon this agreement, or upon said notes.

FOURTH.—That the said part of the second part shall not cut, or permit to be cut or carried away from said premises, any timber, wood or other material without the consent in writing of the part of the first part thereto being first had and obtained.

And if the part of the second part shall cut, or permit to be cut, any timber or wood upon said premises, or remove, or permit to be removed or carried away therefrom, any material, without the consent in writing of the part of the first part obtained as aforesaid, such act shall be deemed and taken to be a surrender of this agreement by , and shall henceforth and forever absolutely forfeit all claim to deed of said land, and every part thereof, and to all improvements which may have made thereon, and the part of the first part shall thereupon be wholly released, absolved and discharged from all liability or obligation to make the conveyance aforesaid, or to refund any of the moneys which may have been paid upon this agreement, or upon said notes; but said part of the first part shall be at liberty, and shall have full right to grant, bargain, sell and convey said premises, and every part thereof to any other person or persons, wholly released and discharged from all right and interest, claim and demand of the

part of the second part therein and thereto, the same as though this agreement had not been made.

And if the part of the second part shall be or remain in the possession or occupancy of any portion of the above bargained premises after a violation of this agreement by the cutting of timber or wood thereon, or by the removal of materials therefrom, or after default in the payment of the said notes at maturity, or in any other of its conditions shall be deemed and taken to be trespasser, and may be ejected from and put out of the possession or occupancy of the premises, either with or without process of law; and no notice whatever to the part of the second part shall be necessary to entitle the part of the first part to enter upon and take possession of said premises, and to sell and convey the same to any other person. And further, it is hereby understood and agreed, that in case of a violation of this agreement by the wrongful cutting of timber or wood, or the removing of materials, or any other violation of this contract as herein mentioned, the part of the second part shall also be liable to be proceeded against as trespasser, in the same manner and to the same extent and effect as provided by law in case of trespassers upon pine or other lands.

FIFTH.—It is hereby agreed, that this contract shall not, nor shall any portion or interest therein, be sold or assigned without the written consent of the part of the first part.

All the obligations, stipulations and conditions herein contained are hereby declared to extend to, and be binding upon, the legal representatives and assigns of the parties respectively making the same.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals at to this, together with one other contract of like tenor, on the day and year first above written.

[Signatures and seals.]

Executed in presence of

[Signatures.]

956. Contract to Sell Land, Vendor Retaining Title Until Paid For.

THIS AGREEMENT, made this day of , A. D., 19 , by and between , of , of the first part, and , of , of the second part, WITNESSETH,

FIRST. That said first part shall and will sell to said second part the following described property, to wit: [description] upon and after full payment therefor by said second part of the sum of dollars, with interest, at the rate of per cent. per annum, in the manner following: dollars upon the execution and delivery of this agreement. dollars on or before the day of , A. D., 19 , with interest as above mentioned.

SECOND. That said second part shall and will pay for said property said sum of dollars, and interest, at the time and in the manner above mentioned, at the in the said of .

THIRD. That the title to said property and right of possession thereto shall be and remain in said first part until said sum of dollars, and interest, and any judgment rendered therefor shall be paid in full.

FOURTH. That in case of default in any of the payments of principal or interest, when due as above specified, and for ten days thereafter, the said first part shall thereupon forthwith have the right to declare this contract at an end, and to take immediate possession of said above described property, and in such case, the said property, as well as all payments of principal or interest which shall have been made hereon, shall belong to and be retained by said first part as liquidated damages for non-performance of this contract on the part of said second part and for use of and injury to said property.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

MINNESOTA.

Where any person, if this chapter had not been passed, would become seized in fee tail of any lands, tenements or hereditaments, by virtue of any gift, grant, or other conveyance, or by any other means, he shall be deemed to be seized thereof as in fee simple. Revised Laws of 1905, § 3193.

A corporation may convey its real estate by an attorney appointed by resolution of its directors or governing board, a copy of which, certified by its clerk, or secretary, may be filed for record with the register of deeds. *Ibid.*, § 3339.

A deed of quitclaim and release shall be sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale. The word "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple. *Ibid.*, § 3340.

Warranty and quitclaim deeds may be substantially in the following forms:

957. Warranty Deed, Statutory Form.

A. B., grantor [*here insert the place of residence*], for and in consideration of [*here insert the consideration*], conveys and warrants to C. D., grantee, of [*here insert the place of residence*] the following described real estate in the county of _____, in the state of Minnesota: [*here describe the premises*]

Dated this _____ day of _____, 19 ____.

[Signature.]

Every such instrument, duly executed as required by law, shall be a conveyance in fee simple of the premises described to the grantee, his heirs and assigns, with covenants on the part of the grantor, his heirs and personal representatives, that he is lawfully seized of the premises in fee simple, and has good right to convey the same: that the premises are free from all incumbrances; that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession thereof; and that he will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed.

958. Quitclaim Deed, Statutory Form.

A. B., grantor, of [*here insert the place of residence*], for the consideration of [*here insert the consideration*], conveys and quitclaims to C. D., the grantee, of [*here insert the place of residence*], all interest in the following described real estate in the county of _____, in the state of Minnesota: [*here describe the premises*]

Dated this _____ day of _____, 19 ____.

Every such instrument, duly executed, shall be a conveyance to the grantee, his heirs and assigns, of all right, title, and interest of the grantor in the premises described, but shall not extend to after acquired title, unless words expressing such intention be added. *Ibid.*, § 3341.

Except as provided in § 3341, no covenant shall be implied in any conveyance, whether such conveyance contains special covenants or not. Nor shall any grant or conveyance of lands, or of any interest therein, be void for the reason that at the time of the execution thereof such land was in the actual possession of another claiming adversely. *Ibid.*, § 3342.

A conveyance made by a tenant for life or years purporting to grant a greater estate than he possessed or could lawfully convey, does not work a forfeiture of his estate, but passes to grantee all the estate which such tenant could lawfully convey. *Ibid.*, § 3343.

In all conveyances by deed of real estate upon which any encumbrance exists, the grantor, whether he executes the same in his own right, or as executor, administrator, assignee, trustee, or otherwise by authority of law, shall, before the consideration is paid, by exception in the deed or otherwise, make known to the grantee the existence and nature of such incumbrance, so far as he has knowledge thereof. *Ibid.*, § 3344.

Whoever conveys real estate by deed containing a covenant that it is free from all incumbrances, when an incumbrance, whether known to him or not, appears of record to exist thereon, but does not exist in fact, shall be liable in an action of contract to the grantee, his heirs, executors, administrators, successors, or assigns, for all damages sustained in removing the same. *Ibid.*, § 3345.

A conveyance, power of attorney, or other instrument affecting real estate may be recorded in every county where any of the lands lie. *Ibid.*, § 3348.

A copy of the record of any conveyance or other instrument authorized by law to be recorded in office of register of deeds in any county, or actually recorded therein in any county other than that in which the land described in or affected by the instrument was situated at time of record thereof, or authorized by law to be recorded in office of secretary of state or of the state auditor, certified by the proper custodian of such record to be a true copy thereof, may be recorded in any county, with the same force and effect that the original instrument would have if so recorded. *Ibid.*, § 3349.

A certified copy of any judgment, decree, or order made by any court of record within state, affecting title to real estate or any interest therein, may be recorded in any county where any of the lands lie, in the same manner and with like effect as a conveyance. *Ibid.*, § 3350.

Deeds of pews and slips in any church may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society or proprietors, if incorporated or legally organized. *Ibid.*, § 3352.

The record as herein provided of any instrument properly recorded shall be taken and deemed notice to parties. *Ibid.*, § 3356.

Every conveyance of real estate shall be recorded in office of register of deeds of county where such real estate is situated; and every such conveyance not so recorded shall be void as against subsequent purchaser in good faith and for valuable consideration of same real estate or any part thereof whose conveyance is first duly recorded, and as against any attachment levied thereof, or any judgment lawfully obtained at suit of any party against person in whose name the title to such land appears of record prior to the recording of such conveyance. The fact that such first recorded conveyance is in the form, or contains the terms, of a deed of quitclaim and release shall not affect the question of good faith of such subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of same real estate or any part thereof. *Ibid.*, § 3357.

Every instrument in the form of a conveyance, lease, or in any other form, in any manner affecting standing timber, stone, ores, minerals, or other similar property in place in or upon the earth, executed in the manner pro-

vided for the execution of conveyances, may be recorded in the office of register of deeds of any county in which such property is situated, and such record shall be notice of the contents thereof and of the rights of all parties thereunder, as well after as before the severance or separation of such property from the land. *Ibid.*, § 3359.

When a deed purports to be an absolute conveyance, but is made or intended to be made defeasible by force of an instrument of defeasance, the original conveyance shall not thereby be defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance is recorded in the county where the lands lie. *Ibid.*, § 3361.

No instrument containing a power to convey lands, when recorded, shall be deemed to be revoked by any act of the party by whom it was recorded, unless the instrument containing such revocation be also recorded in the same office. *Ibid.*, § 3362.

No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power relating to lands, shall be created, granted, assigned surrendered, or declared unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same, or by their lawful agent thereunto authorized by writing. This does not affect power of testator in disposition of real estate by will; nor prevent trust from arising or being extinguished by implication or operation of law. *Ibid.*, § 3487.

When a deed or other instrument conveying land, or a plat of any town site or addition thereto, is presented to the county auditor for transfer, he shall ascertain from his records if there be taxes due upon the land described therein, or if it has been sold for taxes. If there are taxes due, he shall certify to the same; and upon payment of such taxes, and of any other taxes that may be in the hands of the county treasurer for collection, or in case no taxes are due, he shall transfer the land upon the books of his office, and note upon the instrument, over his official signature, the words, "Taxes paid and transfer entered," or, if the land described has been sold or assigned to an actual purchaser for taxes, the words, "Paid by sale of land described within," and, unless such statement is made upon such instrument, the register of deeds shall refuse to receive or record the same: but sheriffs' or referees' certificates of sale on execution or foreclosure of a lien or mortgage, decrees and judgments, and copies of town or village plats, in case the original plat filed in office of register of deeds has been lost or destroyed, may be recorded without such certificate. A violation of this section by the register shall be a gross misdemeanor; and, in addition to the punishment therefor, he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained. *Ibid.*, § 985.

Before the auditor shall indorse his certificate upon any instrument as prescribed in § 985, the same shall be presented to the county treasurer, and, if it appears by his records that the current taxes assessed against the lands therein described have been paid, he shall note over his official signature the words, "Taxes for the year on the lands described within paid." *Ibid.*, § 986.

Upon presentation of a deed or other instrument conveying an undivided part of a parcel of land, and upon payment of an equivalent proportional part of the taxes due thereon, the auditor and treasurer shall indorse their respective certificates thereon as prescribed in §§ 985, 986. The treasurer shall receive payment of such fractional part of the taxes due on such parcel. *Ibid.*, § 987.

When a deed purporting to convey or quitclaim any parcel of land, the record title to which appears to be in two or more persons, is presented to the county attorney, accompanied by an abstract of title to such land, he shall examine such deed and abstract, upon tender of a fee of five dollars therefor. If he finds that such deed is given for the purpose of correcting a defect in

the title, or on account of a technical error in a prior conveyance, he shall so certify upon the deed; and thereupon the register of deeds shall record it, if otherwise entitled to record, notwithstanding that there are unpaid taxes or assessments upon such land. *Ibid.*, § 988.

When any part less than the whole of any parcel of land as charged in the tax lists is conveyed, the auditor shall transfer the same whenever the seller and purchaser agree, in a writing signed by them, or personally appear before the auditor and agree upon the amount of the assessed valuation as may appear to him just. If the auditor is satisfied that the proportion of the valuation so agreed to be transferred is greater than the proportional value of the land to be transferred therewith, and that such agreement was made by collusion of the parties, and with a view fraudulently to evade payment of taxes assessed on the entire parcel, he may refuse to make such transfer; and, when any such transfer has already been procured by fraudulent agreement, he shall cancel the same, and the land so transferred shall be charged with taxes in the same manner as though said transfer had not been made. *Ibid.*, § 989.

On the second Monday in May in each year the county auditor shall sell all parcels of land against which judgment has been entered and remains unsatisfied for the taxes of the preceding year or years. *Ibid.*, § 927.

The county treasurer shall attend the sale, and receive all moneys paid thereon. *Ibid.*, § 928.

The auditor shall execute to the purchaser of each parcel a certificate which may be substantially in the following form:

959. Auditor's Certificate on Sale for Taxes, Statutory Form.

I, _____, auditor of the county of _____, state of Minnesota, do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county of _____, on the _____ day of _____, 19____, in proceedings to enforce the payment of taxes delinquent on real estate for the years _____, for the county of _____, which sale was held at _____, in said county of _____, on the _____ day of _____, 19____, the following described parcel of land, situate in said county of _____, state of Minnesota, to wit: [*insert description*] was offered for sale to the bidder who should offer to pay the amount for which the same was to be sold, at the lowest annual rate of interest on such amount; and at such sale I did sell the said parcel of land to _____ for the sum of _____ dollars, with interest at _____ per cent. per annum on such amount, that being the sum for which the same was to be sold, and such rate of interest being the lowest rate per cent. per annum bid on such sum; and he, having paid said sum, I do therefore, in consideration thereof, and pursuant to the statute in such case made and provided, convey the said parcel of land, in fee simple, to said _____, his heirs and assigns, forever, subject to redemption as provided by law.

WITNESS my hand and official seal this _____ day of _____, 19____.
_____, County Auditor.

If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever. Such certificate may be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect. If any purchaser at such sale shall purchase more than one parcel, the auditor shall issue to him a certificate for each parcel so purchased. *Ibid.*, § 929.

960. Warranty Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the county of , and state of Minnesota, part of the first part, and , part of the second part, WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, unto the said part of the second part, heirs or assigns, forever, all the following described tract . piece or parcel of land, situate in the county of , and state of Minnesota, and known and described as follows, to-wit: [*description*]

TO HAVE AND TO HOLD the same, together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the said part of the second part, heirs and assigns forever. And the said part of the first part, do covenant with the said part of the second part, heirs and assigns, as follows: First, that lawfully seized of said premises; second, that good right to convey the same; third, that the same are free from all encumbrances; fourth, that the said part of the second part, heirs and assigns, shall quietly enjoy and possess the same; and fifth, that the said part of the first part will warrant and defend the title to the same against all lawful claims.

IN TESTIMONY WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

961. Warranty Timber Deed.

THIS INDENTURE, made and entered into this day of , in the year of our Lord one thousand nine hundred and , between , part of the first part, and , Minnesota, party of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs, executors, administrators and assigns, forever, all the timber lying, standing or being upon all tract of land in the county of , and state of , to wit: [*description*] together with the right to enter upon said land and cut and remove therefrom at any time within years from the date hereof the timber herein conveyed, and to cut such other timber and make such other alterations on said lands as may be required in the cutting and removal of said timber.

TO HAVE AND TO HOLD, the said timber, to the said party of the second part, his heirs, executors, administrators and assigns, forever, together with the exclusive right of occupancy of said lands, for and during the term aforesaid; said first part covenanting not to enter on said lands during said term for any purpose whatsoever, except as follows:

All taxes hereafter levied against said lands and that may become payable during said term are to be paid by the second party previous to the day appointed by law for sale of lands for town, county or state taxes; provided, that written notice of lands cut and surrender of title to remaining timber on said lands so cut, served upon the part of the first part by the party of the second part, on or before the first day of June of any year during the life of this agreement will relieve and excuse said party of the second part from further payment of taxes on lands so cut and released; and it is expressly agreed, that the depositing by said second party of said written notice in any United States post-office, addressed to last known address of part of the first part, with postage prepaid, shall constitute service of said notice aforesaid.

And the above described lands, premises and property, in the quiet, peaceable and exclusive possession of the said party of the second part, his heirs, executors, administrators and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said part of the first part will warrant and defend.

IN TESTIMONY WHEREOF, the said part of the first part ha hereunto set hand and affixed seal the day and year first above written.
[Signatures and seals.]

Signed, sealed and delivered in presence of
[Signatures.]

962. Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS, that , in the county of , and state of , held and firmly bound unto in the sum of dollars, lawful money of the United States, to be paid unto heirs, executors, administrators and assigns, for which payment well and truly to be made bind heirs, executors and assigns, firmly by these presents.

WHEREAS, the said this day bargained unto the said , heirs, executors, administrators and assigns, certain lot or parcel of land, situate, lying and being in the county of , and state of , designated and described as follows: [description]

Now, THEREFORE, the condition of this obligation is such, that if the said , heirs, executors, administrators or assigns, make, execute and deliver a good and sufficient warranty deed in fee simple, free from all encumbrances, except such as may arise by virtue of any tax assessed subsequent to the execution of this instrument, of the above described premises, upon being paid the full sum of , according to the conditions of promissory note bearing even date herewith; then this obligation to be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY WHEREOF, ha hereunto set hand and seal , this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of
[Signatures.]

963. Contract for Sale of Land — Crop Clause.

THIS AGREEMENT, made and entered into this day of , A. D. 19 ,
by and between ; party of the first part, and , party of the second
part,

WITNESSETH, that the party of the first part, in consideration of the cove-
nants and agreements of the said party of the second part hereinafter con-
tained, hereby sells and agrees to convey unto the said party of the second
part, or assigns, by good and sufficient deed of warranty, on the prompt
and full performance by said second party of his part of this agreement,
the following described premises, situated in the county of , and state
of Minnesota, to wit: [*description*] and the second party agrees to pay the
party of the first part as and for the purchase price of said premises the sum
of dollars, with interest on all deferred payments at the rate of
per cent. per annum, interest payable annually on the day of ,
19 , and to begin , 19 , said payments to be made in the manner and
at the times following, to wit:

One-half of all the grain to be sown and grown on said premises in each
and every year hereafter and during the continuance of this contract, begin-
ning with the crop for the year 19 ; said one-half of grain to be delivered
in the elevator or on the cars at , or at some other convenient point
not more remote, as said first party shall direct, within a reasonable time after
threshing the same, and free of all expense or charge to the first party; said
grain to be delivered in the name of the first party and to be by first party
promptly sold, and the proceeds thereof applied, first in payment of interest
on said sum at per cent. per annum, and second in reduction of said
principal sum.

The second party further agrees that he will pay all taxes levied or
assessed upon said premises before the same become delinquent, beginning
with the taxes for the year 19 ; that he will during the proper season
in the year 19 , break and back-set in a suitable manner, not less than
acres of the land herein described, now uncultivated; that he will
properly sow and plant during each and every year of the continuance of this
contract, as much of said land as can be profitably sown and planted, and
will have in crop during the year 19 , not less than acres of wheat, and
during each and every year thereafter while this contract continues in force,
not less than acres of wheat.

And that during the continuance of this contract he will carefully
watch over and protect all buildings, fences and shade trees now or hereafter
on said premises, and will in all respects farm and cultivate said premises in
a careful and husbandmanlike manner.

But should default be made in the delivery of said several payments of
grain or any of them or any part thereof, as herein agreed, or in any of the
covenants herein to be by the party of the second part kept and performed,
then this agreement to be void at the election of the party of the first part,
time being the essence of this agreement.

And in case of default by said second party, in whole or in part, of any
or either of the covenants of this agreement by him to be kept and performed,
he hereby agrees on demand of said first party, to quietly and peace-

ably surrender possession of the said premises and every part thereof, it being understood and agreed that until such default said party of the second part is to have possession of said premises.

IT BEING FURTHER UNDERSTOOD AND AGREED, that until the delivery of one-half of the grain as aforesaid, during each and every year of this contract, the legal title to and ownership of all of said grain raised during each and every year shall be and remain in the first party.

Nothing herein contained shall prevent said second party from paying in any year or years more than one-half of the grain, as above stated, and having said extra payments applied upon said debt.

This contract shall not be assignable by second party without the written consent of the first party.

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals, this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

964. Contract for Sale of Lands.

THIS AGREEMENT, made this day of , A. D. 19 , by and between , of the county of , and state of , party of the first part, and , of the county of , and state of , party of the second part,

WITNESSETH, that the party of the first part, for and in consideration of the sum of dollars, to be paid as hereinafter agreed, and of the faithful performance of the covenants, agreements and conditions hereinafter expressed, on the part of the party of the second part to be performed, kept and fulfilled (the performance of each and every of said covenants, agreements and conditions, as well as the payment of said money, being hereby expressly declared a condition precedent, and of the essence of this contract), hereby agrees to sell to the party of the second part, the parcel of land situate and being in the , county of , and state of , described as follows, to-wit: [description] in , according to the recorded plat thereof on file in the office of the register of deeds for the county of , in the state of , together with the hereditaments and appurtenances thereto belonging.

And the party of the second part hereby covenants and agrees to purchase of the party of the first part the above described land and premises, and to pay therefor the full sum of dollars, in manner following, that is to say:

The sum of \$ at or before the execution of this contract.

The sum of \$ on the day of 19 .

The sum of \$ on the day of 19 .

with interest at the rate of per cent. per annum, from the date hereof, on the whole sum from time to time remaining unpaid.

And the party of the second part covenants and agrees with the party of the first part, that so long as this contract remains in force, he will well and faithfully, in due season, pay all taxes and assessments, ordinary and extraordinary, that may be levied or assessed, or that may become chargeable

on said premises or any part thereof; and that all buildings and improvements now on said land, or that shall hereafter be erected, placed, or made thereon, shall not be removed therefrom, but shall be and remain the property of the party of the first part until this contract shall be fully performed by the party of the second part, and the party of the second part for himself and for his heirs, executors, administrators and assigns, covenants and agrees with the party of the first part, his heirs and assigns, that should default be made in the payment, or in any of the payments of the principal, or of the interest aforesaid at the time or any of the times above specified for the payment therefor, or in case the party of the second part shall fail to pay the taxes or assessments upon said land as hereinbefore agreed, then and in such case, this agreement, at the option of said party of the first part, may be canceled and terminated, and all rights, title and interest acquired thereunder by said second part forfeited, by thirty days' written notice, made and served upon said second part in accordance with the provisions of the statute in such case made and provided; and the land and all the buildings and improvements thereon, and all payments made, shall be, and forever remain the absolute property of the party of the first part, his heirs, or assigns, and the party of the second part shall have no right or claim thereto, or any action, or right of action to recover said money, land or buildings, and improvements, or any or either, or any part thereof; it being expressly understood and agreed that time is the essence of this contract, and that the performance of each and every of the covenants and agreements of the party of the second part hereinbefore contained, is as much the consideration of this contract, and a condition precedent, as the payment of the purchase money aforesaid.

And the said party of the first part covenants and agrees with the party of the second part, that upon the full, prompt and faithful performance by the party of the second part of each and every the said covenants and agreements by him to be performed, kept and fulfilled, and upon the payment of the principal and interest of the sum and sums of money above mentioned, in the manner and at the time and times above specified, the party of the first part will convey the said land and premises to the party of the second part, by good and sufficient deed and conveyance with the usual covenants of general warranty.

And it is further agreed that no sale, transfer, assignment or pledge of this contract or of any interest therein, or of or in the premises therein described, shall be in any manner binding upon the party of the first part unless the said party of the first part shall first consent thereto by writing thereon.

IN TESTIMONY WHEREOF, the party of the first part and the party of the second part have hereunto subscribed their names in duplicate, the day and year first above written.

WITNESS:

[Signature.]

, Purchaser.

Post-office address .

County of .

965. Contract for Deed — Crop Clause.

THIS AGREEMENT, made and entered into this day of , A. D. 19 , by and between , party of the first part, and , party of the second part,

WITNESSETH, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on part to be made and performed, the said party of the first part hereby covenants and agrees to convey and assure to the said party of the second part in fee simple, clear of all encumbrances whatever, by a good and sufficient warranty deed, the lot , piece or parcel of ground, situate in the county of , and state of Minnesota, known and described as [description]. And the said party of the second part hereby covenants and agrees to pay the said party of the first part the sum of , payable at the at , Minnesota, in the manner following:

The sum of \$ at or before the execution of this contract;

The sum of \$ on the day of 19 .

The sum of \$ on the day of 19 .

with interest at the rate of per cent. per annum, payable annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land, subsequent to the year . And the said party of the second part agrees to plow and put in crop at least acres of said land each year during the life of this contract, and for the purpose of securing the payments and interest herein, does hereby grant, bargain, sell and mortgage to the said party of the first part all the crops grown on said land during the life of this contract for an amount in each year equal to the amount due and to become due in said year. And in case of the failure of said party of the second part to make either of the payments, or interest thereon or any part thereof, or perform any of the covenants on part hereby made and entered into, then the whole of said payments and interest shall at the election of said first party become immediately due and payable, and this contract shall at the option of the party of the first part be canceled and determined, and all right, title and interest acquired thereunder by said second party forfeited, by giving to said second party thirty days' notice in writing of the intention of said first party to so cancel and determine this contract and annul all right, title and interest acquired thereunder by said second party; said notice to be in accordance with the statute in such case made and provided.

It is mutually understood and agreed by and between the parties of this contract that thirty days is a reasonable and sufficient notice to be so given to said second party, in case of failure to perform any of the covenants on part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of the said first party, and fully reinvest with all right, title and interest hereby agreed to be conveyed, and the party of the second part shall forfeit all payments made by on this contract, and right, title and interest in all buildings, fences or other improvements whatsoever, and such payments and improvements shall be retained by the said party of the first part, in full satisfaction and in liquida-

tion of all damages by sustained, and shall have the right to re-enter and take possession of the premises aforesaid.

IT IS MUTUALLY AGREED, by and between the parties hereto, that the time of payment shall be an essential part of this contract; and that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

IN TESTIMONY WHEREOF, both parties have hereunto set their hands and seals the day and year hereinbefore written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

MISSISSIPPI.

Any interest in or claim to land may be conveyed, to vest immediately or in the future, by writing signed and delivered; and such writing shall have the effect to transfer, according to its terms, the title of person signing and delivering it, with all its instruments, as fully and perfectly as if it were transferred by feoffment with livery of seizin, notwithstanding there may be an adverse possession thereof. Code of 1906, § 2762.

An estate of inheritance or freehold, or for term of more than one year, in lands shall not be conveyed from one to another unless the conveyance be declared by writing signed and delivered. Ibid., § 2763.

Every estate in lands granted or conveyed, although words deemed necessary by common law to transfer an estate of inheritance be not added, shall be deemed fee-simple if less estate be not limited by express words, or unless it clearly appear from the conveyance or will that a less estate was intended to be passed thereby. Ibid., § 2764.

Conveyance of quitclaim and release shall be sufficient to pass all the estate or interest grantor has in land conveyed, and shall estop grantor and his heirs from asserting a subsequently acquired adverse title to lands conveyed. Ibid., § 2767.

Words "grant, bargain, sell," shall operate as express covenant to grantee, his heirs and assigns, that the grantor was seized of an estate, free from incumbrance made or suffered by the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express word contained in conveyance; and grantee, his heirs, executors, administrators, and assigns, may, in any action, assign breaches as if the covenants above mentioned were expressly inserted. Ibid., § 2769.

All alienations and warranties of lands purporting to convey or pass a greater estate than grantor may lawfully convey or pass, shall operate as alienation or warranties of so much of right and estate in such lands as grantor could lawfully convey, but shall not pass or bar right to residue of estate purported to be conveyed; nor shall alienation of any particular estate on which a remainder may depend, whether such alienation be by will or other writing, nor the union of such particular estate with the inheritance, by purchase or by descent, so operate, by merger or otherwise, as to defeat, impair, or in any way affect such remainder. Ibid., § 2774.

Covenant or agreement made in consideration of marriage, shall not be good against purchaser for valuable consideration, not having notice thereof, or any creditor, unless covenant or agreement be lodged with clerk of chancery court of proper county to be recorded, in same manner that conveyances of real or personal estate are directed to be recorded. (§ 2786, Code of 1906.) Ibid., § 2786.

All bargains and sales, and all other conveyances of lands, whether made for passing an estate of freehold or inheritance, or for a term of years shall

bevoid as to creditors and subsequent purchasers for valuable consideration without notice, unless lodged with clerk of chancery court of proper county, to be recorded in same manner that other conveyances are required to be recorded; but the same as between the parties and their heirs, and as to subsequent purchasers with notice or without valuable consideration, shall nevertheless be valid and binding. *Ibid.*, § 2787.

Every conveyance, covenant and agreement shall take effect, as to subsequent purchasers for a valuable consideration without notice, and as to creditors, only from time when delivered to clerk to be recorded. *Ibid.*, § 2788.

Title-bond or other written contract in relation to land may be recorded, in same manner as conveyances of land; and delivery to clerk of chancery court of proper county to be recorded, shall be notice to subsequent purchasers of existence of bond or contract. *Ibid.*, § 2789.

Conveyance of land may be in following form, and shall be as effectual to transfer all the right, title, claim, and possession of the person making it as can be done by any sort of conveyance, viz:

966. Statutory Form of Deed.

"In consideration of [*here state it*], I convey and warrant to the land described as [*describe it*].

"WITNESS my signature, the day of , A. D. ."

If only a special warranty is intended, add word "specially" to word "warrant" in conveyance. *Ibid.*, 2816.

Word "warrant" without restrictive words in conveyance shall have effect of embracing all of the five covenants known as common law, to wit: seizin, power to sell, freedom from incumbrance, quiet enjoyment and warranty of title. *Do.*, § 2817.

Words "warrant specially," in conveyance, shall constitute covenant that the grantor, his heirs and personal representatives, will forever warrant and defend the title of the property unto the grantee and his heirs, representatives, and assigns, against the claims of all persons claiming by, through, or under the grantor. *Ibid.*, § 2818.

Conveyance without any warranty shall operate to transfer title and possession of grantor as a quitclaim and release. *Ibid.*, § 2819.

Conveyance of land sold by sheriff under execution may be in following form, and shall be sufficient to convey all of the title of defendant in execution, which any conveyance such officer might make would in such case convey; and a conveyance by constable in like form, the proper changes being made, shall have like effect in case of sale made by him, viz:

967. Deed by Sheriff.

"By virtue of an execution issued by the clerk of the circuit court of county, on the day of , A. D. , returnable before said court on the Monday of , A. D. , to enforce the judgment of said court, rendered on the day of , A. D. , in favor of against , for dollars, and costs, I, as sheriff of county, have this day, according to law, sold the following lands, to wit: [*here describe the land*]; when became the best bidder therefor at the sum of dollars, and he having paid said sum of money, I now convey said land to him.

"WITNESS my hand, the , A. D. .

, Sheriff.

Ibid., § 2822.

A conveyance by an administrator, executor, guardian, master, or commissioner, who may sell land under decree of court, may be in following form, and shall be effective to convey all that could or would be conveyed in such case by any form of conveyance, viz:

968. Deed by Administrator, Executor, Guardian, Master or Commissioner.

"By virtue of the authority conferred on me, administrator of the estate of _____, deceased, by the decree of the chancery court of _____ county, rendered on the _____ day of _____, confirming a sale made on the _____ day of _____, in pursuance of a decree of said court rendered on the _____ day of _____, I, as administrator of said estate, in consideration of _____ dollars, convey to _____, the purchaser thereof, the following land, to wit: [*here describe the land*].

"WITNESS my signature, the _____ day of _____, A. D. _____."

The description of character of maker of conveyance will vary the form according to the fact. *Ibid.*, § 2823.

969. Form of Deed by Tax Collector.

STATE OF MISSISSIPPI, }
County of _____ }

Be it known, that I, _____, the tax collector of the said county of _____, did, on the _____ day of _____, A. D. _____, according to law, sell the following land, situated in said county and assessed to _____, to wit: [*here describe the land*] for the taxes assessed thereon (or when sold for other taxes, it should be so stated) for the year A. D. _____, when _____ became the best bidder therefor and the purchaser thereof, at and for the sum of _____ dollars and _____ cents. I therefore sell and convey said lands to the said _____.

GIVEN under my hand, the _____ day of _____, A. D. _____,
_____, Tax Collector.

Ibid., § 4332.

970. Deed of Trust, Statutory Form.

A deed of trust or mortgage may be in the form of a conveyance to the witness clause and then as follows:

"In trust to secure [*here state what is secured, and all the necessary provisions*].

"WITNESS my signature, the _____ day of _____, A. D. _____."

Ibid., § 2820.

MISSOURI.

The sale and conveyance of real estate under a will shall be made by the acting executor or administrator with the will annexed, if no other person be appointed by the will for that purpose, or if such person fail or refuse to perform the trust. Annotated Statutes of 1906, § 137.

If a testator or intestate shall have entered into a contract, in writing, for the conveyance of real estate, and shall not have executed same, nor given power by will to execute same, the other party may present a petition

to court, setting forth the facts, and praying that an order be made that the executor or administrator execute such contract specifically, by executing to him a deed for same. *Ibid.*, § 173.

Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition. *Ibid.*, § 174.

Notice of the application and a copy of petition shall be served on executor or administrator, and also on heirs or devisees residing or who may be served in the county twenty days before the first day of the term at which it is to be made. *Ibid.*, § 175.

If court, after hearing all parties, believe specific execution of such contract ought to be made, it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind and persons absent from the United States, the term of five years after their disabilities are removed to appear and file their petition in the circuit court to set aside such order, for fraud or otherwise. *Ibid.*, § 176.

When any order for specific execution of a contract shall be made, the executor or administrator shall execute and deliver to petitioner a deed, conveying the estate according to the order, and expressing therein the saving of the rights above named, according to the order, and stating date of order and court at which it was made. *Ibid.*, § 177.

Such deed shall be as effectual as if it had been executed by the deceased. *Ibid.*, § 178.

When an unconditional judgment shall be made for a conveyance, release or acquittance, and the party required to execute the same shall not comply therewith, such judgment shall be considered and taken to have the same operation and effect and be as available as if the conveyance, release or acquittance had been executed conformably to the judgment. *Ibid.*, § 787.

Conveyances of lands, or of any estate or interest therein, may be made by deed executed by any person having authority to convey the same, or by his agent or attorney, and recorded as herein directed. *Ibid.*, § 900.

Any person claiming title to real estate may, notwithstanding an adverse possession thereof, sell and convey his interest therein, in same manner and with like effect as if he was in actual possession thereof. *Ibid.*, § 905.

All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, or by his lawful agent. *Ibid.*, § 906.

The words "grant, bargain and sell," in all conveyances in which any estate of inheritance in fee simple is limited, shall, unless restrained by expressed terms contained in such conveyances, be construed to be the following expressed covenants on the part of the grantor, for himself and his heirs to the grantee, his heirs and assigns: First, that the grantor was, at the time of the execution of said conveyance, seized of an indefeasible estate in fee simple, in the real estate thereby granted; second, that such real estate was, at the time of the execution of such conveyance, free from encumbrances done or suffered by the grantor or any person under whom he claims; third, for further assurances of such real estate to be made by the grantor and his heirs to the grantee and his heirs and assigns; and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance. *Ibid.*, § 907.

All deeds or other instruments of writing conveying or affecting real estate, executed in a foreign country, and in accordance with the laws of this state, may be made and taken in the language of such country, and the same, accompanied with a sworn translation in English of the same, by the recorder of land titles in the county where recorded, shall be entitled to record, and be received in evidence in any court in the state, in like manner as if the same were originally written in the English language. *Ibid.*, § 909.

Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, shall be recorded in the office of the recorder of the county in which such real estate is situated. *Ibid.*, § 923. .

Every such instrument in writing, recorded in the manner hereinbefore prescribed, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof and all subsequent purchasers and mortgagees shall be deemed, in law and equity, to purchase with notice. *Ibid.*, § 924.

No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the recorder for record. *Ibid.*, § 925.

Every letter of attorney, or other instrument containing a power to convey real estate as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any instrument in writing conveying real estate, or whereby real estate may be affected in law or equity, shall be recorded, as other instruments in writing conveying or affecting real estate are required to be recorded. *Ibid.*, § 930.

No such letter of attorney, or other instrument, recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded. *Ibid.*, § 931.

Whenever any deed or other instrument of writing, conveying or affecting real estate situate in two or more counties in this state, is duly recorded in any one of said counties, any person interested therein may procure from the recorder of deeds of such county a duly certified copy of such record with his seal of office affixed, and cause such certified copy, together with the certificate thereof, to be recorded in any other county where such real estate may be situated, in same manner as original instrument is or may be by law required to be recorded. *Ibid.*, § 9086.

The record of such copy and certificate shall, after same has been duly made, thereafter impart notice to all persons of contents of such record and of the original instrument from which such record has been made, and all subsequent purchasers and mortgagees shall be deemed to purchase with notice thereof. *Ibid.*, § 9087.

Where any person or persons are seized of lands, tenements or hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, covenant, contract, agreement, will, or otherwise, all and every such person or persons and bodies politic having any such use, confidence or trust, in fee simple for term of life or of years, or otherwise, or any use, confidence or trust, in remainder or reversion, shall be seized, deemed and adjudged in lawful seizin, estate and possession of and in the same lands, tenements and hereditaments, with their appurtenances, of and in such like estates, as they had or shall have in use, confidence or trust of or in the same; and the estate, right, title and possession that was or shall be in such person or persons that were or shall be seized of any lands, tenements or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, shall be deemed and adjudged to be in him, her or them, that have or thereafter shall have such use, confidence or trust, after such quality, manner, form or condition as they had before in or to the use, confidence or trust that was or shall be in them. *Ibid.*, § 4589.

The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of real estate shall pass all the estate of the grantor therein, unless the intent to pass a less estate shall expressly appear, or be necessarily implied in the terms of the grant. *Ibid.*, § 4590.

An estate of freehold or of inheritance may be made to commence in future by deed, in like manner as by will. *Ibid.*, § 4596.

All deeds executed by any sheriff to a purchaser of land sold for delinquent and back taxes, shall be prima facie evidence that the persons named therein as defendants in the suit to enforce the lien of the state of Missouri for the delinquent and back taxes, were the absolute owners of the land conveyed, at the time of the institution of the action. *Ibid.*, § 3150.

The officer who shall sell under execution any real estate, or lease of lands and tenements for more than three years, shall make to the purchaser a deed, to be paid for by the purchaser, reciting the names of the parties to the execution, the date when issued, the date of the judgment, order or decree, and other particulars, as recited in the execution; also a description of the property, the time, place and manner of the sale, which recital shall be received as evidence of the facts therein stated. *Ibid.*, § 3210.

Every such deed executed by sheriff upon a sale under execution shall be recorded as other conveyances of land. *Ibid.*, § 3213.

In a suit on any special tax-bill the judgment shall be special that the plaintiff shall recover the amount found due, including interest, together with costs, to be levied and made off the land described in the tax-bill, and a special execution shall issue to sell the land to pay such judgment, interest and costs. Upon sales made by the sheriff under any such special execution, he shall issue to the purchaser a certificate of purchase, setting forth the substance of such special execution, the date of sale, the purchaser, the property sold and the amount paid. If the property so sold be redeemed within one year from date of sale, no deed shall be given by sheriff. If the lot or parcel of land so sold be not redeemed, a deed shall be given at end of one year from date of said sale by sheriff to holder of certificate. Such deed shall vest all the right, title, interest and estate in the land so sold that defendants and each of them owned at the time that the lien of the tax-bill commenced, or acquired afterwards. *Ibid.*, § 6314.

The judgment in an action to enforce payment of taxes, if against defendant, shall describe the land upon which taxes are found to be due; shall state the amount of taxes and interest found to be due upon each tract or lot, and the year or years for which the same are due, up to the rendition thereof; and shall decree that the lien of the state be enforced, and that the real estate, or so much thereof as may be necessary to satisfy such judgment, interest and costs, be sold, and a special fieri facias shall be issued thereon, which shall be executed as in other cases of special judgment and execution. *Ibid.*, § 9304.

The sheriff shall execute to the purchaser of real estate so sold, a deed of the same, which shall convey a title in fee to such purchaser of the real estate therein named, and shall be prima facie evidence of title, and that the matters and things therein stated are true. *Ibid.*, § 9305.

Every person who shall make, execute or deliver any deed or writing for the conveyance or assurance of any lands, tenements or hereditaments, which he had previously, by deed or writing, sold, conveyed, mortgaged or assured, or covenanted to convey or assure, to any other person, such first deed being outstanding and in force, and shall not in such second deed or writing recite or describe such former deed or writing, or the substance thereof, with intent to defraud, and every person who shall knowingly take or receive such second deed or writing, shall be guilty of a crime. *Ibid.*, § 1932.

971. Warranty Deed.

THIS INDENTURE, made on the day of , A. D. one thousand nine hundred , by and between , of , part of the first part, and , of the of , in the state of , part of the second part, WITNESSETH, that the said part of the first part, in consideration of the

sum of dollars, to paid by the said part of the second part, the receipt of which is hereby acknowledged, do by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM, unto the said part of the second part, heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situated in the of , and state of , to wit: [*description*]

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances, immunities and improvements thereto belonging, or in anywise appertaining, unto the said part of the second part, and unto heirs and assigns, forever; the said hereby covenanting that will warrant and defend the title to the said premises unto the said part of the second part and unto heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of us.

[*Signatures.*]

972. Quitclaim Deed.

THIS INDENTURE, made on the day of , A. D. one thousand nine hundred , by and between , of the county of , and state of , part of the first part, and , of the county of , in the state of , part of the second part,

WITNESSETH, that the said part of the first part, in consideration of the sum of dollars, to paid by the said part of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto said part of the second part, the following described lots, tracts or parcels of land, lying, being and situate in the county of , and state of , to wit: [*description*]

*(This deed of quitclaim being made in release of, and satisfaction for, a certain deed dated the day of , 1 ; recorded in the recorder's office, within and for the county of aforesaid in Deed Book , at page , .)

TO HAVE AND TO HOLD the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said part of the second part, and heirs and assigns, forever, so that neither the said part of the first part, nor heirs, nor any other person or persons for or in name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises or any part thereof, but they and every of them shall, by these presents, be excluded and forever barred.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand the day and year first above written.

[*Signatures and seals.*]

Signed and delivered in presence of us

[*Signatures.*]

* Erase this clause in case this deed is not made in release of some other instrument.

973. Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the county of _____, and state of _____, held and firmly bound to _____, of the county of _____, and state of _____, in the sum of _____ dollars to be paid _____ executors, administrators or assigns, to the payment whereof _____ bind _____ heirs, executors and administrators firmly by these presents. Dated the _____ day of _____, 19 _____.

The condition of this obligation is, that if _____, the said _____, upon payment of _____ dollars and interest thereon, as agreed and promised by said _____, agreeably to _____ note, dated _____, 19 _____, and made payable as follows, to wit:

_____ shall convey to said _____, _____ heirs, executors or assigns, forever, the following described real estate, situated, lying and being in the county of _____, and state of _____, to wit: [description]

By _____ deed or deeds in common form duly executed and acknowledged, and in the meantime shall permit said _____ to occupy and improve said premises for _____ own use, then this obligation shall be void, otherwise it shall remain in full force.

[Signatures and seals.]

Signed and delivered in presence of

[Signature.]

974. Conveyance in Trust.

THIS DEED, made and entered into this _____ day of _____, nineteen hundred and _____, by and between _____ part of the first part, and _____ part of the second part, and _____ of _____, party of the third part;

WITNESSETH, that the said part _____ of the first part for and in consideration of the sum of _____ dollars, to _____ in hand paid by the said party of the third part, the receipt of which is hereby acknowledged, and the further sum of one dollar to _____ paid by said part _____ of the second part, the receipt of which is also hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm, unto the said part _____ of the second part, heirs and assigns, and _____ successors, in trust, forever, the following described real estate, situated in the county of _____, state of _____, to wit: [description]

TO HAVE AND TO HOLD the same together with all and singular the privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said part _____ of the second part, _____ heirs and assigns, and to _____ successors, in trust forever.

IN TRUST HOWEVER, for the sole and separate use, benefit, enjoyment and behoof of the said _____, her heirs and assigns, and entirely free from all control, restraint or interference on the part of _____, her husband, and free from his rights of curtesy or other marital rights.

The said _____, to have, hold, use, occupy and enjoy the exclusive and undisturbed possession of said real estate and the appurtenances thereunto belonging, with power to direct the sale, or lease, or other disposal of the same, at her will and pleasure, and to receive to her own separate use and

benefit the proceeds of such sale, and all rents and profits arising or accruing from the lease or other disposal of the same; the said part of the second part holding said real estate subject at all times to the direction in writing under her hand and seal without the intervention of her husband, of the said _____, her heirs or assigns, as to the disposal of the said real estate, whether by lease, conveyance in fee, mortgage, assignment or transfer of this trust, or otherwise. Upon the decease of said third party said trustee shall and will convey all interests yet in him in said real estate in accordance with the last will of said third party, but in case said third party should leave no will, then said trustee shall and will convey said real estate to the legal heirs of said third party. And the said _____ shall have power at any time hereafter whenever she shall from any cause deem it necessary or expedient, by an instrument in writing under her hand and seal, and by her acknowledged, to nominate or appoint a trustee or trustees, in the place and stead of the part of the second part above named; which trustee or trustees, or the survivors of them or the heirs of such survivor, shall hold the said real estate, upon the same trust above recited; and upon the nomination and appointment of such new trustees, the estate in trust hereby vested in said part of the second part shall thereby be fully transferred and vested in the trustee or trustees so appointed by the said _____. And the said part of the first part covenant to warrant and defend the title to said real estate against the claims of all persons whomsoever. And the said part of the second part covenant faithfully to perform and fulfill the trust herein created.

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands the day and year first above written.

[Signatures.]

975. Contract for Right of Way to Railroad Company.

THIS AGREEMENT, WITNESSETH: For and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, it is hereby agreed that all the right of way necessary to construct the railway shall be granted and conveyed to the Interstate Railway Company, or being a strip of land _____ feet in width, being _____ feet wide on each side of the center line of its railroad, as the same be finally located and constructed (permission therefor being hereby given) over, through or across the following lands situated in the county of _____, State of Missouri, to wit: [*description*] Consideration _____ dollars.

That the undersigned will execute a deed conveying said right of way, upon request, at any time after the final location of said railway upon or across the above described land.

IN WITNESS WHEREOF, we have hereunto set our hand this _____ day of _____ A. D. 19 _____.

[Signatures.]

MONTANA.

An estate, during the life of a third person, whether limited to heirs or otherwise, is a freehold. Revised Codes of 1907, § 4486.

Except where the grant under which the land is held indicates a different intent, the owner of the land when it borders upon a navigable lake or

stream takes to the edge of the lake or stream at low water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream. *Ibid.*, § 4529.

An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown. *Ibid.*, § 4530.

A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by grantor. *Ibid.*, § 4596.

A grant duly executed is presumed to have been delivered at its date. *Ibid.*, § 4597.

A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute. *Ibid.*, § 4598.

Words of inheritance or succession are unnecessary to transfer a fee in real property. *Ibid.*, § 4608.

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing subscribed by party disposing of same, or by his agent thereunto authorized by writing. *Ibid.*, § 4612.

A grant of an estate in real property may be made in substance as follows:

976. Statutory Form of Deed.

"I, A. B., in consideration of dollars now paid, grant to C. D. all the real property situated in [*insert name of county*] county, State of Montana, bounded (or, described) as follows: [*here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as for instance, 'The Norris ranch'*].

"WITNESS my hand this [*insert day*] day of [*insert month*] 18 .

A. B."

Ibid., § 4613.

When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of the principal to it, and his own name as attorney in fact. *Ibid.*, § 4616.

Any person in whom the title of real estate is vested, who shall afterwards have his or her name changed, shall, in any conveyance of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section, shall subject any such person to a penalty of fifty dollars, to be collected by the county attorney for the benefit of the common schools. *Ibid.*, § 4617.

A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended. *Ibid.*, § 4619.

Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded. *Ibid.*, § 4621.

A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. *Ibid.*, § 4622.

A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof, unless a different intent appears from the grant. *Ibid.*, § 4626.

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants, and none other, on the part of grantor for himself and his heirs to grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. *Ibid.*, § 4627.

Any instrument affecting the title to or possession of real property may be recorded under this chapter (§§ 4643-4687). *Ibid.*, § 4643.

Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated. *Ibid.*, § 4650.

An instrument is deemed to be recorded, when it is deposited in the county clerk's office with the proper officer for record. *Ibid.*, § 4651.

Every conveyance of real property, recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees. *Ibid.*, § 4683.

Every conveyance of real property other than a lease for a term not exceeding one year, is void against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. *Ibid.*, § 4684.

No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded, in the same office in which the instrument containing the power was recorded. *Ibid.*, § 4686.

An unrecorded instrument is valid between the parties and those who have notice thereof. *Ibid.*, § 4687.

977. Warranty Deed.

THIS INDENTURE, made this day of , A. D. one thousand nine hundred and , between , of part of the first part, and , of , the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, (\$) lawful money of the United States of America, to in hand paid by said part of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey, warrant and confirm unto the said part of the second part, and to heirs and assigns, forever, the hereinafter described real estate, situated in the city or town of , county of , and state of Montana, to wit: [description]

TOGETHER with all and singular the hereinbefore described premises together with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging. To have and to hold, all and singular the above mentioned and described premises unto the said party of the second part, and to heirs and assigns forever.

And the said part of the first part, and heirs, do hereby covenant that will forever warrant and defend all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said part of the second part, heirs and assigns, against the acts and deeds of the said part of the first part, and all and every person and persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first hereinbefore written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

978. Quitclaim Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of , part of the first part, and , of , the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, (\$) to in hand paid by the said part of the second part, the receipt of which is hereby acknowledged, do remise, release and forever quitclaim unto the said part of the second part, and to heirs and assigns, the following described real estate, situated in the , county of , and state of Montana, to wit: [description] together with all the tenements, hereditaments and appurtenances threunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, , property, possession claim and demand whatsoever as well in law as in equity, of the said part of the first part, of, in or to the said premises and every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the said premises, with the appurtenances unto the said part of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signature.]

979. Contract for Sale of Real Estate.

IN CONSIDERATION of payment or tender thereof to be made as herein stated by , of , county of , state of Montana, , hereby agree upon payment or tender thereof, to , of dollars, at any time within from date hereof, to execute and deliver to said , or to any person or persons shall designate, a good and sufficient deed of [description] in county, state of Montana.

WITNESS hand at , Montana, this day of , A. D. 19 .

[Signatures and seals.]

Witness:

[Signature.]

980. Contract for Deed.

THIS AGREEMENT, made and entered into this day of , A. D. 19 ,
by and between of the county of and state of , part of the
first part, and of the county of and state of , part of the
second part,

WITNESSETH, that if the said part of the second part shall first make the
payments and perform the covenants hereinafter mentioned on part to
be made and performed, the said part of the first part hereby covenants and
agrees to convey and assure to the said part of the second part, in fee simple,
clear of all incumbrances whatever, by a good and sufficient deed, the lot ,
piece or parcel of ground, situate in the county of and state of Mon-
tana, known and described as [*description*]. And the said part of the second
part hereby covenants and agrees to pay the said part of the first part the
sum of dollars, payable at , in the manner following:

The sum of \$ at or before the execution of this contract; the sum of
\$ on or before the day of , 19 ; the sum of \$ on or
before the day of , 19 ; with interest at the rate of per cent.
per annum, payable annually, on the whole sum remaining from time to
time unpaid; and to pay all taxes, assessments or impositions that may be
legally imposed upon said land, subsequent to the year . And in case
of the failure of the said part of the second part to make either of the pay-
ments, or interest thereon or any part thereof, or perform any of the covenants
on part hereby made and entered into, then the whole of said payments
and interest shall, at the election of said first part , become immediately due
and payable, and this contract shall, at the option of the part of the first
part, be forfeited and determined by giving to said second part days'
notice, in writing, of the intention of the said first part to cancel and determine
this contract, setting forth in said notice the amount due upon said contract,
and the time and place, when and where, payment can be made by said second
part .

It is mutually understood and agreed by and between the parties to this con-
tract that days is a reasonable and sufficient notice to be so given to said
second part . in case of failure to perform any of the covenants on
part hereby made and entered into, and shall be sufficient to cancel all obli-
gations hereunto on the part of the said first part and fully reinvest
with all right, title and interest hereby agreed to be conveyed, and the part of
the second part shall forfeit all payments made by on this contract, and
right, title and interest in all buildings, fences or other improvements
whatsoever, and such payments and improvements shall be retained by the said
part of the first part, in full satisfaction and in liquidation of all damages by
sustained, and shall have the right to re-enter and take posses-
sion of the premises aforesaid.

IT IS MUTUALLY AGREED, by and between the parties hereto, that the time
of payment shall be an essential part of this contract; and that all the cove-
nants and agreements herein contained shall extend to and be obligatory upon
the heirs, executors, administrators and assigns of the respective parties.

IN TESTIMONY WHEREOF, both parties have hereunto set their hands and seals the day and year hereinbefore written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

NEBRASKA.

Deeds of real estate or any interest therein in this state, except leases for one year or for a less time, if executed in this state, must be signed by grantor or grantors and recorded as directed in this chapter (§§ 10800-10888). Annotated Statutes of 1907, § 10800.

If executed in any other state, territory, or district of the United States, it must be executed either according to the laws of such state, territory, or district, or in accordance with the laws of this state. *Ibid.*, § 10803.

If such deed be executed in a foreign country, it may be executed according to the laws of such country. *Ibid.*, § 10806.

Every deed entitled by law to be recorded shall be recorded in the order and as of the time when the same shall be delivered to the register of deeds for that purpose, and shall be considered recorded from the time of such delivery. *Ibid.*, § 10815.

All deeds and other instruments of writing which are required to be recorded shall take effect and be in force from and after the time of delivering the same to the register of deeds for record, and not before, as to all creditors and subsequent purchasers in good faith without notice; and all such deeds and other instruments shall be adjudged void as to all such creditors and subsequent purchasers without notice whose deeds or other instruments shall be first recorded; but such deeds and instruments shall be valid between the parties. *Ibid.*, § 10816.

Deeds and other instruments relating to or affecting the title of real estate in this state, shall be recorded in the county in which such real estate, or any part thereof, is situated; but if such county is not organized, then in the county to which such unorganized county is attached for judicial purposes. *Ibid.*, § 10818.

No instrument containing a power to convey or in any manner to affect real estate, executed and recorded in conformity with the requirements of this chapter, can be revoked by any act of the party, or parties, thereto until the instrument of revocation is executed and filed for record with register of deeds of county in which the power is recorded. *Ibid.*, § 10819.

Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage, and the person for whose benefit such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time. *Ibid.*, § 10825.

No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely. *Ibid.*, § 10830.

The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any real estate or interest therein shall be conveyed for a valuable consideration, and also any assignee of a mortgage or lease, or other conditional estate. *Ibid.*, § 10844.

Every letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, may be recorded in office of register of deeds of any county in which the real estate to which such power or con-

tract relates may be situated, and the record thereof, when recorded, or the transcript of such record, may be read in evidence, in same manner and with like effect as a conveyance recorded in such county. *Ibid.*, § 10846.

A duly authenticated copy of the record of any power recorded in this state shall be entitled to record, and shall operate to all intents and purposes, having the same force and effect, as the record of the original instrument. Such copy shall be duly authenticated only when there shall be attached thereto a certificate of the register of deeds under his hand and official seal, setting forth that the same is a true copy of original record in his office, date of filing of original instrument, and volume and page where same is recorded; but it shall be unlawful for any register of deeds in this state to give a certified copy of any power of attorney which has been revoked and the revocation thereof filed in his office, without also stating the fact of such revocation in his certificate. *Ibid.*, § 10846.

The term "heirs," or other technical words of inheritance, shall not be necessary to create or convey an estate in fee simple. *Ibid.*, § 10850.

Every conveyance of real estate shall pass all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. *Ibid.*, § 10851.

When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor to the extent of that which the deed purports to convey shall accrue to the benefit of the grantee; but such after-acquired interest shall not inure to the benefit of the original grantor,* or his heirs or assigns, if deed conveying said real estate was either a quitclaim or special warranty, and the original grantor in any case shall not be estopped from acquiring said premises at judicial or tax sale, upon execution against the grantee or his assigns, or for taxes becoming due after date of his conveyance. *Ibid.*, § 10852.

Estates may be created to commence at a future day. *Ibid.*, § 10853.

Every contract for the sale of lands, between the owner thereof and any broker or agent employed to sell the same, shall be void, unless the contract is in writing and subscribed by the owner of the land and the broker or agent, and such contract shall describe the land to be sold, and set forth the compensation to be allowed by the owner in case of sale by the broker or agent. *Ibid.*, § 10856.

In all cases where any person claiming title to real estate, whether in actual possession or not, for which such person can show a plain and commercial title, in law or equity, derived from the records of some public office, or from the United States, or from this state, or derived from any such person by devise, descent, deed, contract, or bond, such person or persons so claiming or holding, shall not be evicted or turned out of possession of such real estate, nor shall his claim or title be set aside or cancelled by any court in any proceedings brought or commenced by any person setting up and proving an adverse and better title, or claim to such real estate, until such person claiming as aforesaid shall be fully paid the value of all lasting and valuable improvements made upon such real estate by such claimant or by those under whom he claims, and also for all taxes and assessments paid upon said real estate by such claimant and the persons under whom he claims, with interest thereon at the same rate of interest as provided by law for delinquent taxes, and for all sums of money paid by such occupant or claimant, or those under whom he claims, to redeem such real estate from any sale or sales for non-payment of taxes previous to receiving actual notice by the commencement of suit on such adverse title or claim by which such eviction or cancellation may be had, unless such occupant or claimant shall refuse to pay the person so setting up and proving an adverse and better title the value of such real estate without improvements made thereon as aforesaid, upon the demand of the successful claimant as hereinafter provided. *Ibid.*, § 10857.

* So in original.

The sheriff or other officer, who, upon a writ or writs of execution, shall sell lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of lands and tenements sold as the person or persons against whom such writ or writs of execution were issued could have made of the same, at the time they became liable to the judgment, or at any time thereafter. *Ibid.*, § 1501.

The deed shall be sufficient evidence of the legality of such sale and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein-mentioned as was vested in the party at or after the time when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases. *Ibid.*, § 1502.

Real property may be conveyed by master commissioners as hereinafter provided: First—when by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment. Second—when specific real property is required to be sold under an order or judgment of the court. *Ibid.*, § 1441.

A sheriff may act as a master commissioner under the second subdivision of the preceding section. Sales made under the same shall conform in all respects to the laws regulating sales of land upon execution. *Ibid.*, § 1442.

The deed of a master commissioner shall contain the like recital and shall be executed and recorded, as the deed of a sheriff, of real property sold under execution. *Ibid.*, § 1443.

At any time within three years after the expiration of two years from the date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the county treasurer, on request, and on production of the certificate of purchase, and upon compliance with the provisions of this act, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate. *Ibid.*, § 11116.

The deed so made by the county treasurer shall, when executed, be recorded in the same manner as other conveyances of real estate, and when so recorded shall vest in the grantee, his heirs and assigns, the title of the property therein described. Such conveyance shall be substantially in the following form:

981. County Treasurer's Deed.

KNOW ALL MEN BY THESE PRESENTS, that whereas, at a sale of real estate for the non-payment of taxes, made in the county of _____, on the day of _____, A. D. 19____, the following described real estate situate in said county, to wit: [*here describe real estate conveyed*] was sold to _____ for the delinquent taxes of the year _____ and, Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the state of Nebraska, necessary to entitle _____ to a deed of said real estate: Now, Therefore, I, county treasurer of said county of _____, in consideration of the premises, and by virtue of the statutes of the state of Nebraska in such cases made and provided, do hereby grant and convey unto _____, his heirs and assigns,

Every conveyance of real estate within this territory, which shall not be recorded as provided in this Act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded. *Ibid.*, § 2665.

Every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed, or may be affected, shall be recorded as other conveyances whereby real estate is conveyed or affected, are required to be recorded. *Ibid.*, § 2666.

No such power of attorney or other instrument, recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of party by whom it was executed, until the instrument containing such revocation shall be deposited for record in same office in which the instrument containing the power is recorded. *Ibid.*, § 2667.

When any conveyance, or other instrument, conveying or affecting real estate, is recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof. *Ibid.*, § 2669.

Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in same manner and with same effect as if he was in actual possession. *Ibid.*, § 2673.

The term heirs, or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of real estate executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant. *Ibid.*, § 2681.

The words "grant, bargain and sell," in all conveyances, in and by which any estate of inheritance or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyance, be construed to be the following express covenants, and none other, on the part of the grantor, for himself and his heirs to the grantee, his heirs, and assigns. First—That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title, or interest therein to any person other than the grantee. Second—That such real estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. *Ibid.*, § 2688.

No estate, or interest in lands, other than for leases for a term not exceeding one year, shall be created, granted, assigned, or surrendered, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, or surrendering the same, or by his lawful agent thereunto authorized in writing. *Ibid.*, § 2694.

Conveyances of mining claims shall require the same formalities and be subject to the same rules of construction as the transfers and conveyances of other real estate. *Ibid.*, § 2720.

NEW HAMPSHIRE.

Real estate may be conveyed by deed executed by any person or by his attorney, recorded as directed in this chapter (chap. 137, §§ 1-20, pp. 436-438). Public Statutes of 1901, p. 436, § 1.

Any public or private corporation authorized to hold real estate may convey same by an agent appointed by vote for that purpose. *Ibid.*, p. 436, § 2.

Every deed or other conveyance of real estate shall be signed by party granting same, and shall be recorded at length in registry of deeds in county in which the land lies. *Ibid.*, p. 437, § 3.

No deed of bargain and sale, nor other conveyance of real estate, nor any lease for more than seven years from the making thereof, shall be valid to hold same against any person but grantor and his heirs only, unless recorded according to the provisions of this chapter. *Ibid.*, p. 437, § 4.

A person interested in a deed or lease recorded in one county, may cause same, with the certificate of record, to be recorded in registry of any other county; and an attested copy of such record shall be of same validity as a copy from original registry. *Ibid.*, p. 437, § 5.

Every power of attorney to convey real estate must be signed, and may be recorded as required for a deed, and a copy of the record may be used in evidence, whenever a copy of the deed so made is admissible. *Ibid.*, p. 437, § 6.

If a person having an unrecorded deed or other evidence of title of real estate in his possession neglects to record the same, or refuses to allow same to be recorded, for the space of thirty days after being thereto requested in writing by a person having an interest in such estate, any justice, upon complaint thereof, may issue his warrant and cause such person to be brought before him for examination; and if sufficient cause for such neglect or refusal is not shown, may order such deed or evidence of title to be recorded, and commit the person to jail until such order is performed and payment of costs is made. *Ibid.*, pp. 437, 438, § 11.

Every estate or interest in lands, created or conveyed without an instrument in writing, signed by grantor or his attorney, shall be deemed an estate at will only; and no estate or interest in lands shall be assigned, granted, or surrendered, except by writing signed as aforesaid, or by operation of law. *Ibid.*, p. 438, § 12.

A conveyance made by a person having a limited interest in an estate, purporting to convey a greater interest than he possessed or could lawfully convey, shall not work a forfeiture thereof, but shall pass to grantee all the estate which he could lawfully convey. *Ibid.*, p. 438, § 18.

The collector of taxes, if living, otherwise his administrator, after two years from the sale of land for taxes, shall execute to the purchaser or his heirs, on request therefor, a deed of the land so sold and not redeemed, which shall be substantially in the following form:

984. Tax Collector's Deed, Statutory Form.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, collector of taxes for the town of _____, in the county of _____, and state of New Hampshire, for the year 19____, by the authority in me vested by the laws of the state, and in consideration of _____, to me paid by _____, do hereby sell and convey to him, the said _____, his heirs and assigns [*here describe the land sold*], to have and to hold the said premises with the appurtenances to him, _____, his heirs and assigns forever. And I do hereby covenant with said _____, that in making sale of the same I have in all things complied with the law, and that I have good right, so far as that right may depend upon the regularity of my own proceedings, to sell and convey the same in manner aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the _____ day of _____, _____.

[*Signatures and seals.*]

Signed, sealed and delivered in the presence of _____

[*Signatures.*]

Ibid., pp. 220, 221, § 16.

A right of a debtor to redeem mortgaged real estate, or to redeem any right or interest in real estate, or to receive a conveyance of real estate on performance of a contract relating thereto, and terms for years, may be taken on execution, and may be sold at auction and conveyed, as herein provided. *Ibid.*, p. 735, § 19.

The deed of the officer making the sale shall briefly state his office, the names of the parties to the action in which the execution issued, the court and term at which the judgment was rendered, the consideration paid for the right or term sold, a description of the premises conveyed and of the right of the debtor therein; and it shall contain a covenant that the officer has observed all the requirements of law by virtue of which the deed is made. *Ibid.*, pp. 735, 736, § 23.

The officer shall make a full return of his proceedings, and cause the execution and return to be recorded at length in the registry of deeds of the county in which the real estate lies, and to be returned to the office of the clerk of the court to which it is returnable; and no sale of a greater interest than a term of seven years shall be valid, except against the debtor and his heirs, unless the execution and the return are so recorded. *Ibid.*, p. 736, § 24.

The sale and deed made in pursuance thereof shall be void if, within one year after the sale, the debtor shall pay or tender to the purchaser the purchase money, and all reasonable sums paid by him for taxes, insurance, repairs, and the redemption of mortgages upon the estate, to protect and preserve the interest purchased by him, with interest thereon from dates of payments respectively, less the rents and profits received, or which might have been received, by him and with which he is justly chargeable. *Ibid.*, p. 736, § 26.

The state treasurer, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property. *Ibid.*, p. 231, § 1.

Real estate of every kind so levied upon shall be sold, and a deed and return thereof made, in the manner provided by law for the sale of the equity of redemption of real estate mortgaged; and the owner thereof shall have the same right to redeem the same. *Ibid.*, p. 232, § 9.

985. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, for and in consideration of the sum of _____, to _____ in hand before the delivery hereof well and truly paid by _____, the receipt whereof _____ do hereby acknowledge, have granted, bargained, and sold, and by these presents do give, grant, bargain, sell alien enfeoff convey, and confirm unto the said _____, heirs and assigns forever [*here insert description*].

TO HAVE AND TO HOLD the said granted premises, with all the privileges and appurtenances to the same belonging to _____, the said _____, and heirs and assigns, to _____ and their only proper use and benefit forever. And _____, the said _____, and _____ heirs, executors, and administrators, do hereby covenant, grant, and agree, to and with the said _____, and heirs and assigns, that until the delivery hereof, _____ the lawful owner of the said premises, and _____ seized and possessed thereof in own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the premises are free and clear from all and every incumbrance whatsoever; and that _____, and heirs, executors, and administrators, shall and will warrant and defend the

same to the said _____, and _____ heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, _____ wife, of the said _____, in consideration aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we and each of us do hereby release, discharge, and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights whatsoever in said premises, and in each and every part thereof, as our family homestead, as are reserved, or secured to us, or either of us, by the statute of the state of New Hampshire, passed July 4, 1851, entitled "An Act to exempt the homestead of families from attachment and levy or sale on execution," or by any other statute or statutes of said state.

IN WITNESS WHEREOF, _____ have hereunto set _____ hand and seal _____, this _____ day of _____, in the year of our Lord 19 _____.

Signed, sealed, and delivered in presence of us.

986. Quitclaim Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, for and in consideration of the sum of _____ to _____ in hand before the delivery hereof, well and truly paid by _____, have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim unto the said _____, heirs and assigns forever. [*description*]

TO HAVE AND TO HOLD the said premises, with all the privileges and appurtenances thereunto belonging, to the said _____, heirs and assigns forever; and _____ do hereby covenant with the said _____ that _____ will warrant and defend the said premises to _____, the said _____, heirs and assigns, against the lawful claims and demands of any person or persons claiming by, from or under _____.

And I, _____, wife of said _____, for the consideration aforesaid, do hereby release my right of dower in said premises.

IN WITNESS WHEREOF, _____ have hereunto set _____ hand and seal this _____ day of _____ in the year of our Lord 19 _____.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of us.

[*Signatures.*]

987. Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, of _____, in the county of _____, and state of New Hampshire, am held and firmly bound to _____ in the sum of _____ dollars, to be paid to said _____, heirs, executors, administrators and assigns, to the payment whereof I bind myself, and my heirs firmly, by these presents.

Sealed with my seal, and dated the _____ day of _____, A. D. 19 _____.

The conditions of this obligation are: That said _____ upon payment of _____ dollars within _____ months from the _____ day of _____, A. D. 19 _____, said _____ shall on demand make, execute and deliver to said _____, heirs, administrators, executors or assigns, a good and sufficient warranty

deed forever, of a certain tract or parcel of land situated in _____, county of _____, and state of New Hampshire, bounded and described as follows: [description]

IN WITNESS WHEREOF, _____ have hereunto set _____ hand and seal this day of _____, in the year of our Lord, 19 ____.

[Signatures and seals.]

Signed and sealed in presence of us

[Signatures.]

NEW JERSEY.

Every agreement for the sale or purchase of lands or real estate in this State which shall be recorded, shall be void against subsequent judgment creditors of vendor or vendors and against subsequent purchasers and mortgagees for value of said lands or real estate, unless vendee or vendees, his or their heirs, executors, administrators or assigns, within three months after the date fixed in such agreement for its consummation, or if no date is so fixed, then within three months after the date of such agreement, or if such consummation is extended by the parties thereto before the date fixed therein for its consummation, beyond the date so fixed, and such extension is recorded as agreements for the sale of lands are now required to be recorded in order to give them the effect of notice to subsequent judgment creditors, purchasers and mortgagees, then within three months after the date fixed in such extension, or upon the death of vendor or vendors or one or more of them within any such period of three months, then within three months after such death, shall commence suit for specific performance of said agreement, or for its rescission or for the violation of any of the covenants therein contained, and shall file a notice of the pendency of such suit in office of clerk of Court of Common Pleas, except in counties where there is a register of deeds and mortgages, then in the office of register of deeds and mortgages of county in which such lands or real estate lie, setting forth the title of the cause and the general object thereof, together with a description of the land or real estate to be affected thereby. Laws of 1907, chap. 200, p. 454.

A deed may be made in the following form or to the same effect:

988. Statutory Form of Deed.

THIS DEED, made the _____ day of _____, in the year _____, between [here insert names and residence of parties];

WITNESSETH: That in consideration of [here state the consideration] the said _____ doth [or, do] grant and convey unto the said _____ all, et cetera [here describe the property and insert covenants or any other provisions];

IN WITNESS WHEREOF, the said party of the first part ha hereunto set _____ hand and seal the day and year first above written;

[Signatures and seals.]

Signed, sealed, and delivered in presence of

[Signatures.]

Laws of 1899, chap. 208, § 1, p. 531.

Every such deed made, executed and delivered, conveying lands shall, unless an exception is made therein, be construed to include all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, both in law and equity, of the grantor (including the fee simple if he have such estate), of, in and to the said premises, with the appurtenances; and

the word heirs shall not be necessary in any such deed to effect a conveyance of the fee simple. *Ibid.*, § 2, as amended by Laws of 1902, chap. 231, p. 688.

Every such deed conveying land shall, unless an exception shall be made therein, be construed to include all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof. Laws of 1899, chap. 208, § 3, p. 531.

Whenever in any deed, there shall be used the words "the grantor (or the said) releases to the said grantee (or the said) all his claims upon the said lands," such deed shall be construed as if it set forth that "the grantor (or releasor) hath remised, released, and forever quit-claimed, and by these presents doth remise, release and forever quitclaim unto the grantee (or releasee), his heirs and assigns, all right, title and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or released) or intended so to be, so that neither he, nor his personal representatives, his heirs or assigns, shall at any time thereafter have claim, challenge or demand the said lands and premises, or any part thereof, in any manner whatever." *Ibid.*, § 4, p. 532.

When a deed uses the words "the said covenants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives and assigns. *Ibid.*, § 5, p. 532.

A covenant by the grantor in a deed "that he will warrant generally the property hereby conveyed," shall have the same effect as if the grantor has covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever. *Ibid.*, § 6, p. 532.

A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor and all persons claiming, or to claim by, through or under him. *Ibid.*, § 7, p. 532.

The words "with general warranty" in the granting part of any deed shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed"; the words "with special warranty" in the granting part of any deed shall be deemed to be a covenant by the grantor "that he will warrant specially the property hereby conveyed." *Ibid.*, § 8, p. 532.

A covenant by the grantor in a deed "that he is lawfully seized of the said land," shall have the same effect as if he had covenanted, promised and granted to and with the grantee, his heirs and assigns, that at the time of the sealing and delivery thereof, he, the said grantor, was seized in his own right of an absolute and indefeasible estate of inheritance in fee-simple, of and in all and singular the premises hereby granted, with the appurtenances. *Ibid.*, § 9, p. 533.

A covenant by the grantor in a deed of land "that he has the right to convey the said land to the grantee" shall have the same effect as if the grantee had covenanted that he has good right, full power and absolute authority to grant, bargain, sell and convey the said land, with all the buildings thereon, and the privileges and appurtenances thereunto belonging unto the grantee, his heirs and assigns forever, in the manner in which the same is conveyed, or intended so to be by the deed, and according to its true intent. *Ibid.*, § 10, p. 533.

A covenant by any such grantor "that the grantee shall have quiet possession of the said land," shall have as much effect as if he covenanted that the grantee, his heirs and assigns might at any and all times thereafter, peaceably and quietly enter upon, and have, hold, use, and occupy, possess and enjoy the land conveyed by the deed, or intended so to be, with all the buildings thereon, and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit without any let, suit, eviction, interruption, claim or demand whatever of the grantor, his heirs or assigns, or any other person or persons whomsoever lawfully claiming or to claim the same; if to such covenant there be added "free from all incumbrances," these words shall have as much effect as the words "and that the said premises are free and clear and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions, and of and from all other incumbrances whatever." *Ibid.*, § 11, p. 533.

A covenant by any such grantor "that he will execute such further assurance of the said lands as may be requisite," shall have the same effect as if he covenanted that he, the grantor, his heirs or personal representatives, will, at any time, upon any reasonable request at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done or executed, all such further acts, deeds and things for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, unto the grantee, his heirs and assigns, in manner aforesaid as by the grantee, his heirs, or assigns, his or their counsel in the law, shall be reasonably devised, advised or required. *Ibid.*, § 12, pp. 533, 534.

A covenant by any such grantor "that he has done no act to incumber the said lands," shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered to be done or executed, any act, deed, or thing whereby the lands and premises conveyed or intended so to be, or any part thereof, are or will be changed, charged, altered, affected, defeated, or incumbered in title, estate or otherwise. *Ibid.*, § 13, p. 534.

Any deed or a part of a deed which shall fail to take effect by virtue of this act shall, nevertheless, be as valid and effectual and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been enacted. *Ibid.*, § 14, p. 534.

A warranty made by a tenant for life of lands, tenements or hereditaments, which shall descend or come to any person in reversion or remainder, shall be inoperative and void. Laws of 1898, chap. 232, § 2, p. 670.

A collateral warranty, which shall be made of lands, tenements or hereditaments, by an ancestor, who, at the time of making it, hath no estate of inheritance in possession therein, shall be inoperative and void against his heirs. *Ibid.*, § 3, p. 671.

Whenever lands, tenements or hereditaments, lying and being in this state, are or shall be sold and conveyed, and a mortgage is given by the purchaser or purchasers at the same time on the land sold to secure the payment of the purchase-money or any part thereof, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser or purchasers. *Ibid.*, § 4, p. 671.

All deeds or instruments of the nature or description following, of, or affecting the title to any lands, tenements or hereditaments, lying and being in this state, or any interest therein, may be recorded in the office of the clerk of the court of common pleas of the county where the said lands, tenements or hereditaments are situated, that is to say: conveyances, releases, defeasible deeds or other conveyances in nature of a mortgage, letters of attorney for any sale, conveyance, assurance, acquittance or release, leases for life or any term not less than two years, or any assignments thereof, agreements for sale, and all other instruments directed by any statute to be recorded. *Ibid.*, § 21, p. 678.

Whenever any such deed or instrument of the nature or description set forth in the twenty-first section of this act, is duly recorded, or lodged for

that purpose, with the clerk of the court of common pleas of the county in which such lands, tenements, or hereditaments, are situated, such record is notice to all subsequent judgment creditors, purchasers, and mortgagees, of the execution of the said deed or instrument and of the contents thereof. *Ibid.*, § 53, p. 690.

Every deed or instrument of the nature or description set forth in the twenty-first section of this act, shall, until duly recorded or lodged for record in the said clerk's office, be void and of no effect against subsequent judgment creditors without notice, and against all subsequent bona fide purchasers and mortgagees for valuable consideration, not having notice thereof, whose deed or mortgage shall have been first duly recorded; but such deeds or instruments shall be valid and operative, although not recorded, except as against such subsequent judgment creditors, purchasers and mortgagees; and nothing in this act contained shall be construed to affect or impair the effect of any mortgage or the registry thereof which has been or shall be registered as provided in section seventeen of the act entitled "An act concerning mortgages" (Revision), approved March twenty-seventh, one thousand eight hundred and seventy-four. *Ibid.*, § 54, as amended by Laws of 1900, chap. 16, pp. 32, 33.

The record aforesaid of any such deed or instrument, of the nature or description set forth in the twenty-first section of this act, and the transcript of such record, shall be received in evidence in any court of this state and be as good, effectual and available in law as if the original deed or instrument were then and there produced and proved; and the record and transcript of the record of deeds and conveyances recorded in the office of the secretary of state, shall in like manner be received in evidence and be as effectual and available as if the original were produced and proved. *Ibid.*, § 55, pp. 690, 691.

Either party in any cause pending in any court of law or equity in this state may give the opposite party, his attorney or solicitor, notice in writing at least ten days before the time appointed for the trial or hearing of said cause, that he will be required at such trial or hearing to produce the original, instead of the record of any deed or instrument by this act authorized to be recorded, which he may think proper to offer or introduce in evidence; and in case of such notice, no record of such deed or instrument shall be received in evidence, until satisfactory proof, by the oath or affirmation of the party offering said record in evidence, or of other person, shall be made to the court or officer before whom such record may be offered, that the original hath been lost, or unintentionally destroyed, or that, after having made diligent search and inquiry, such party hath been unable to find said original; and the court shall determine, according to the circumstances and situation of the parties, whether such diligent search and inquiry has been made. *Ibid.*, § 56, p. 691.

When any deed or instrument of the nature or description set forth in the twenty-first section of this act shall for a period of six years or more have stood on record in any of the lawful books of record in this state appropriate for such deed or instrument, the record of such deed or instrument, after the lapse of the said period, shall be and become valid for every purpose of notice as aforesaid; and such deed or instrument, the said record and certified copies thereof, shall be received in evidence in any court and be as effectual as if the original deed had been produced and proved, provided the same shall be corroborated, by evidence of corresponding enjoyment or other equivalent or explanatory proof. *Ibid.*, § 64, pp. 696, 697.

The estate of the lessee of any lands, tenements, hereditaments, or real estate, or of any estate, or interest therein, for life or for a term of not less than two years, the lease whereof shall have been recorded in manner aforesaid, shall be liable to sale under a judgment or decree, in like manner only, as estates of freehold are now liable to be sold thereunder. *Ibid.*, § 66, pp. 697, 698.

Whenever lands or property lie partly in one county and partly in one

or more other counties, and a deed or instrument of the nature or description set forth in the twenty-first section of this act, shall have been recorded in one of such counties, a certified copy may be recorded in any or all of the other said counties in which such lands or property lie, and the record of such certified copy shall be made in same manner and be as valid and effectual in law for all purposes of notice as aforesaid, and such record and certified copies thereof shall be as valid and effectual as evidence as if the original deed was then and there recorded in the stead of such certified copy. *Ibid.*, § 67, p. 698.

Whenever any deed or conveyance for lands or real estate in this state shall purport to have been executed by virtue of any letter of attorney, and said deed shall have been properly recorded, the recital of the letter of attorney in said deed shall be prima facie proof of the existence thereof, notwithstanding the same may not be recorded, in case such deed or deeds shall have been recorded at least ten years, and the person claiming under said deed shall take and subscribe an oath or affirmation that he has seen such letter of attorney so recited, which shall be recorded in the county clerk's office in the county where such lands are situate, in the book therein provided for the recording of the powers of attorney to convey lands. *Ibid.*, § 69, p. 699.

Any lease or deed of conveyance of any railroad or canal located and constructed in more than one county, shall and may be recorded in office of secretary of state in a book to be provided for that purpose; and the record of any such lease or deed recorded as aforesaid, or a transcript thereof, shall be received in evidence in any court of this state, and have same effect as if original lease or deed were then and there produced and proved. *Ibid.*, § 70, p. 699.

For the purpose of notice under this act, each block or parcel of land separately numbered with a block number, and also each lot of land in a block, shall be deemed to extend to the middle line of the streets, avenues and roads, laid out on the land map, fronting and adjoining such blocks and lots respectively. *Ibid.*, § 80, p. 705.

All instruments presented to the recording officer in a county adopting local or block indexes, for recording or registering, shall be legibly indorsed by him with the number of the block or blocks in which the land affected by the instrument is situated. *Ibid.*, § 84, p. 706.

No clerk of the court of common pleas shall record any deed which conveys property situate in any city of this state that has or shall have atlas or block maps upon which shall be platted the lots and subdivisions of lots and real estate situate in said city, unless it shall be duly certified thereon that the same has been presented at the office of the officer, officers or other department of such city having charge of such atlas or block maps, for the purpose of recording or noting such changes as may have been made thereby in the property lines and ownership of the property therein described; but such deeds shall be recorded even without such certificate being indorsed thereon in case the fee for plotting such deeds upon the city atlas or block map, together with a fee of twenty cents for the use of said clerk, shall be paid to him. This act shall not apply to the recording of any deed conveying land situate in any city where a contract exists between the municipal authorities of such city and the clerk for the making of abstracts of such deeds for the purpose of having the land therein conveyed plotted upon the block or atlas maps of such city; but such deeds shall be recorded as heretofore, anything to the contrary in this act notwithstanding. *Ibid.*, § 94, pp. 709, 710.

Every section of this act referring expressly or impliedly to the "clerks of the courts of common pleas" shall be understood, read, and construed to refer as well to "registers of deeds and mortgages," in counties in which there are or shall be such officers, as truly as if "registers of deeds and mortgages" had been expressly named therein, instead of "clerks of the courts of common pleas," "clerks" or "county clerks." *Ibid.*, § 97, p. 711.

989. Warranty Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , of the of , in the county of , and state of , of the first part; and , of the of , in the county of , and state of , of the second part, WITNESSETH: That the said party of the first part, for and in consideration of , lawful money of the United States of America, to in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented, and paid, ha given, granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said party of the second part, and to heirs and assigns forever, all tract or parcel of land and premises hereinafter particularly described, situate, lying, and being in the of , in the county of , and state of [*here insert description*].

Together with all and singular, the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said party of the first part, of, in, and to the same, and of, in, and to every part and parcel thereof.

To HAVE AND TO HOLD, all and singular the above-described land and premises, with the appurtenances, unto the said party of the second part, heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, heirs and assigns forever; and the said , do for , heirs, executors, and administrators, covenant and grant to and with the said party of the second part, heirs and assigns, that , the said , the true, lawful, and right owner of all and singular the above-described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging, and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not incumbered by any mortgage, judgment, or limitation, or by any incumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above-described land and premises, can or may be changed, charged, altered, or defeated in any way whatsoever:

And also, that the said party of the first part now good right, full power, and lawful authority, to grant, bargain, sell, and convey the said land and premises in manner aforesaid; and also, that will warrant, secure, and forever defend the said land and premises unto the said , heirs and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly, freed and discharged of and from all manner of incumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part ha hereunto set hand and seal , the day and year first above written.

Signed, sealed, and delivered in the presence of

990. Deed of Bargain and Sale.

THIS INDENTURE, made the day of , in the year of our Lord one thousand hundred and , between , of the of , in the county of , and state of , of the first part; and , of the of , in the county of , and state of , of the second part, WITNESSETH: That the said party of the first part, in consideration of the sum of , lawful money of the United States of America, to in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to heirs and assigns forever, all tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the of , in the county of , and state of [*here insert description*].

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, , property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances, To HAVE AND TO HOLD, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, heirs and assigns forever, to the only proper use, benefit, and behoof of the said party of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part ha hereunto set hand and seal , the day and year first above written.

Signed, sealed, and delivered in the presence of

991. Same ; with Covenant against Grantor.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , of the of , in the county of , and state of , of the first part; and , of the of , in the county of , and state of , of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of , lawful money of the United States of America, to in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to heirs and assigns forever, all tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the of , in the county of , and state of [*here insert description*].

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

And also, all the estate, right, title, interest, , property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances, To HAVE AND TO HOLD, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, and assigns forever. And the said party of the first part do for , covenant and grant to and with the said party of the second part, and assigns, that the said party of the first part ha not done, caused, suffered, or procured to be done, any act, matter, or thing, whereby the title of the said party of the second part, of, in, and to the above granted, bargained, and described land and premises, or any part thereof can or may be changed, charged, altered, or defeated in any way whatsoever.

IN WITNESS WHEREOF, the said party of the first part ha hereunto set hand and seal , the day and year first above written.

Signed, sealed, and delivered in the presence of

992. Quitclaim Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , of the of , in the county of , and state of , of the first part; and , of the of , in the county of , and state of , of the second part, WITNESSETH: That the said party of the first part, in consideration of the sum of , to duly paid before the delivery hereof, ha remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim to the said party of the second part, and to heirs and assigns, all tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the of , in the county of , and state of [*here insert description*], with the appurtenances, and all the estate, right, title, and interest, of the said party of the first part therein, To HAVE AND TO HOLD, the above-mentioned and described premises, with the appurtenances, unto the said party of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part ha hereunto set hand and seal , the day and year first above written.

Signed, sealed, and delivered in the presence of

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The words, bargained and sold, or words to the same effect, in all conveyances of hereditary real estate, unless restrained in express terms on the part of the person conveying the same, himself and his heirs, to the person to whom the property is conveyed, his heirs, and assignees, shall be limited to the following effect:

First. That the grantor at the time of the execution of said conveyance, is possessed of an irrevocable possession in fee simple to the property so conveyed.

Second. That the said real estate, at the time of the execution of said conveyance, is free from all encumbrance made or suffered to be made by the grantor, or by any person claiming the same under him.

Third. For the greater security of the person, his heirs and assignees to

whom said real estate is conveyed by the grantor and his heirs, suits may be instituted the same as if the conditions were stipulated in the said conveyance. Compiled Laws of 1897, § 3941.

All conveyances of real estate shall be subscribed by the person transferring his title or interest in said real estate, or by his legal agent or attorney. *Ibid.*, § 3942.

All deeds and other writings affecting the title to real estate shall be recorded in the office of the probate clerk of the county or counties in which the real estate affected thereby is situated. *Ibid.*, § 3953.

Such records shall be notice to all the world of the existence and contents of the instruments so recorded from the time of recording. *Ibid.*, § 3954.

No deed or other instrument in writing, not recorded in accordance with section 3953, shall affect the title or rights to, in any real estate, of any purchase or mortgage in good faith, without knowledge of the existence of such unrecorded instruments. *Ibid.*, § 3955.

The time of the recording of an instrument shall be the time of its deposit in the office of the probate clerk and his entry thereof in the reception book as herein provided. It shall be the duty of every probate clerk immediately on the receipt for record of any deed or other writing affecting the title to real estate, to enter the same by the name of the grantor or other person whose title is affected thereby, in a proper book, alphabetically arranged, to be known as the Reception Book, together with the date, hour and minute of such record. Any probate clerk failing to make such entry immediately, shall be punished by a fine of one hundred dollars, and shall also be liable for damages to any person injured by such neglect, to the extent of such injury. *Ibid.*, § 3956.

None of said writings shall be valid except to the parties interested and those who have actual notice of the same, until it shall be deposited in the office of the clerk to be registered. *Ibid.*, § 3960.

All powers of attorney or other writing containing authority to convey real estate as agent or attorney of the owner of the same, or to execute as agent for another all conveyances of real estate, or by which real estate may be affected in law or equity, shall be registered, as other writings conveying or affecting real estate are required to be registered. *Ibid.*, § 3962.

No such power of attorney or other writing registered in the manner prescribed in the foregoing section, shall be considered revoked by any act of the party executing the same, until the writing revoking the same shall be deposited with the clerk of the register's office, in which said power of attorney or writing is registered. *Ibid.*, § 3963.

All writings conveying or affecting real estate, having been registered in the manner hereinbefore prescribed, may be read as evidence without further proof. *Ibid.*, § 3964.

When said writing is registered in the manner hereinbefore prescribed, and it be proved to the court that said writing is lost, or that it is not in the hands of the party wishing to use it, then the record of the same, or a transcript of said record, certified to by the recorder, under his seal of office may be read as evidence without further proof. *Ibid.*, § 3965.

Neither the record nor a transcript of the record of said writing, shall be conclusive, but may be contested. *Ibid.*, § 3966.

The clerks of the probate courts of the different counties of this territory, shall be ex-officio recorders in their respective counties. *Ibid.*, § 776.

When any land title, or other document, shall be delivered to the recorder to be recorded, it shall be his duty to indorse immediately on that document, or other paper, the day, month and year in which he received it, and he shall record it in the book of record as soon as possible, and the said documents from the date in which they were delivered to the recorder shall be considered as recorded, and this shall be sufficient notice to the public of the contents thereof. *Ibid.*, § 778.

On or before the first Monday in March of each year, the county collector is required to offer at public sale at the court house door of his county, all real estate on which taxes of any description for the preceding year, or years, shall remain due and unpaid, and sell the same for and in payment of the total amount of taxes, interest and costs due and unpaid on such real estate. *Ibid.*, § 4074.

At any time after the expiration of the term of three years from the date of the sale of any real estate for taxes under the provisions of this chapter, on demand of the purchaser, his heirs or assigns, and on presentation of the certificate of sale, the collector then in office shall make out a deed for each lot or parcel of real estate sold and remaining unredeemed, and deliver the same to the purchaser, his heirs or assigns. *Ibid.*, § 4100.

The deed shall be signed by the collector in his official capacity, and when substantially thus executed and recorded in the proper register of conveyances, shall vest in the purchaser all the right, title, interest and estate of the former owner in and to the land conveyed, and also all the right, title, interest and claim of the territory and county thereto, and shall be prima facie evidence in all courts in the territory in all controversies and suits in relation to the rights of the purchaser, his heirs or assigns to the land thereby conveyed, of the following facts:

First. That the real estate conveyed was subject to taxation for the year, or years, stated in the deed.

Second. That the taxes were not paid at any time before the sale.

Third. That the real estate conveyed had not been redeemed from the sale at the date of the deed.

Fourth. That the property had been listed and assessed at the time and in the manner required by law.

Fifth. That the taxes were levied according to law.

Sixth. That the property was advertised for sale in the manner and for the time required by law.

Seventh. That the property was sold for taxes as stated in the deed.

Eighth. That the grantee named in the deed was the purchaser, or the heir-at-law, or the assignee of the purchaser.

Ninth. That the sale was conducted in the manner required by law. *Ibid.*, § 4101.

When any tax deed is filed for record the recorder shall also enter the name of the grantee in the proper column of his record of land sold for taxes. *Ibid.*, § 4102.

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The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee. Consolidated Laws of 1909, chap. 50 (Real Property Law), § 240, Birdseye C. & G. Cons. Laws, p. 5052.

An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power over or concerning real property, or in any manner relating thereto, can not be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. *Ibid.*, § 242, p. 5053.

A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass or by his lawful agent. *Ibid.*, § 243, p. 5057.

A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed. *Ibid.*, § 244, p. 5058.

A grant of real property passes all the estate or interest of the grantor unless the intent to pass a less estate or interest appears by the express terms of such grant or by necessary implication therefrom. *Ibid.*, § 245, p. 5059.

Deeds of bargain and sale, and of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto. *Ibid.*, § 246, p. 5059.

A conveyance made by a tenant for life or years of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey. *Ibid.*, § 247, p. 5059.

A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not. *Ibid.*, § 251, p. 5062.

In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. **Seizin.**—A covenant that the grantor "is seized of the said premises (described) in fee simple, and has good right to convey the same," must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. **Quiet enjoyment.**—A covenant that the grantee "shall quietly enjoy the said premises," must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. **Freedom from incumbrances.**—A covenant "that the said premises are free from incumbrances," must be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

4. **Further assurance.**—A covenant that the grantor will "execute or procure any further necessary assurance of the title to said premises," must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. **Warranty of title.**—A covenant that the grantor "will forever warrant the title" to the said premises, must be construed as meaning that the grantor and his heirs or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors or assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. **Grantor has not incumbered.**—A covenant that the grantor "has not done or suffered anything whereby the said premises have been incumbered," must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part

or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever. *Ibid.*, § 253, p. 5063.

In any grant of freehold interests in real estate, the words, "together with the appurtenances and all the estate and rights of the grantor in and to said premises," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances. *Ibid.*, § 255, p. 5068.

In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances. *Ibid.*, § 256, p. 5068.

The use of the following forms of instruments for the conveyance of real property is lawful, but this section does not prevent or invalidate the use of other forms:

993. Deed with Full Covenants.

THIS INDENTURE, made the day of , in the year nineteen hundred and , between of [*insert residence*] of the first part, and of [*insert residence*] of the second part.

WITNESSETH, that the said party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever [*description*], together with the appurtenances and all the estate and rights of the part of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from incumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

[Signatures and seals.]

In presence of:

[Signature.]

994. Executor's Deed.

THIS INDENTURE, made the day of , nineteen hundred and , between , as executor of the last will and testament of , late of , deceased, of the first part, and , of the second part, WITNESSETH:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of dollars, lawful money of the United States, paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever [description] together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year first above written.

[Signatures and seals.]

In presence of:

[Signature.]

Ibid., § 258, p. 5069.

A grant of real property is absolutely void, unless the same shall be made to the people of the state of New York, if at the time of the delivery thereof, such property is in actual possession of a person claiming under a title adverse to that of the grantor, but such possession does not prevent the mortgaging of said property. Ibid., § 260, p. 5074.

A conveyance of real property, within the state duly acknowledged or proved, may be recorded in the office of the clerk of the county where such real property is situated, and such county clerk shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded. Ibid., § 291, p. 5090.

An exentory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, duly acknowledged and proved, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated. Ibid., § 294, p. 5094.

A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate in the office of any recording officer of the state. Ibid., § 296, p. 5095.

A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument were so recorded. *Ibid.*, § 297, p. 5095.

Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery. *Ibid.*, § 317, p. 5106.

A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time. *Ibid.*, § 320, p. 5107.

A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded. *Ibid.*, § 326, p. 5112.

The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in section two hundred and fifty-three of this chapter, at large, instead of the short forms thereof, in said section contained, the sum of five dollars in addition to the fees chargeable by law for such recording. *Ibid.*, § 327, p. 5112.

The forms of deeds in common use in New York State are given above in Forms Nos. 775-870.

NORTH CAROLINA.

When real estate is conveyed to any person, same shall be conveyance in fee, whether word "heirs" shall be used or not, unless conveyance shall, in plain and express words, show, or it shall be plainly intended by conveyance or part thereof, that grantor meant to convey estate of less dignity. Revisal of 1908, § 946.

No conveyance of land, or contract to convey, or lease of land for more than three years shall be valid to pass property, as against creditors or purchasers for valuable consideration, from donor, bargainor or lessor, but from the registration thereof within the county where the land lieth: but no purchase from such donor, bargainor or lessor shall avail or pass title against unregistered deed executed prior to first day of December, 1885, when person holding or claiming under such unregistered deed shall be in actual possession and enjoyment of such land, either in person or by his tenant at time of execution of such second deed, or when person, claiming under or taking such second deed, had at time of taking or purchasing under such deed actual or constructive notice of such unregistered deed, or the claim of person holding or claiming thereunder. *Ibid.*, § 980.

Power of attorney, wherever made or concerning whatsoever matter, may, on acknowledgment or proof of the same before any competent official, be registered in county wherein property or estate which it concerns is situate, if such power of attorney relate to conveyance thereof; if it does not relate to conveyance of any estate or property, then in county in which attorney resides or business is to be transacted. *Ibid.*, § 987.

A duly certified copy of deed or writing, required or allowed to be registered, may be registered in any county; and the registry or duly certified copy of deed or writing when registered in county where land is situate may be given in evidence in any court of state. Ibid., § 988.

995. Warranty Deed.

STATE OF NORTH CAROLINA, }
County. }

THIS DEED, made this the day of , 19 , by of county and state of , of the first part, to of county and state of , of the second part,

WITNESSETH, that said in consideration of paid by , the receipt of which is hereby acknowledged, ha bargained and sold, and by these presents do bargain, sell, and convey to said , heirs and assigns, a certain tract or parcel of land in county, state of , adjoining the lands of and others, bounded as follows, viz.: [*description*]

TO HAVE AND TO HOLD the aforesaid tract or parcel of land, and all privileges and appurtenances thereto belonging, to the said , heirs and assigns, to only use and behoof forever.

And the said covenant with said , heirs and assigns, that seized of said premises in fee, and ha right to convey in fee simple; that the same are free and clear from all encumbrances, and that will the same are free and clear from all encumbrances, and that will warrant and defend the said title to the same against the claim of all persons whomsoever.

IN WITNESS WHEREOF, the said ha hereunto set hand and seal , the day and year above written.

Attest:

[*Signatures and seals.*]

996. Quitclaim Deed.

STATE OF NORTH CAROLINA, }
County. }

KNOW ALL MEN BY THESE PRESENTS, that we, and , his wife, of county, state aforesaid, for divers good causes and considerations thereunto moving and more particularly for dollars, received of , have remised, released and forever quitclaimed, and by these presents do, for ourselves and heirs, executors and administrators, justly and absolutely remise, release and forever quitclaim, unto the said and to his heirs and assigns forever, all such right, title and interest as we the said and , his wife, have or ought to have, in or to all that piece, parcel, tract or lot of land lying in the county of in township, and described as follows: [*description*]

TO HAVE AND TO HOLD the above-released premises unto him said , his heirs and assigns, to his and their only proper use and behoof forever; so that we, nor either of us, or any other person, in our name and behalf, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every of them shall, by these presents, be excluded and forever barred.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our several seals, this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

NORTH DAKOTA.

If real property sold under execution is not redeemed according to law, the purchaser or his assignee or the redemptioner, as the case may be, is entitled to a sheriff's deed of the property and it shall be the duty of the sheriff to execute and deliver such deed, immediately after the time for redemption has in each case expired. Revised Codes of 1905, § 7143.

Upon the expiration of the period for redemption the proper officer must make the purchaser, or the party entitled thereto, a deed of the real property sold. The deed shall be sufficient evidence of the legality of such sale and the proceedings therein, until the contrary is proved, and shall vest in the purchaser or other party as aforesaid as good and perfect a title in the premises therein mentioned and described as was vested in the debtor at or after the time when such real property became liable to the satisfaction of the judgment. And such deed or conveyance to be made by the sheriff or other officer, must recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of such judgment by virtue whereof the said real property was sold as aforesaid, and must be executed and recorded as is or may be provided by law to perfect the conveyance of real property in other cases. *Ibid.*, § 7149.

At expiration of time for redemption of lands sold for delinquent taxes and after the filing of notice of expiration of period for redemption, and on production of the certificate of purchase, the county auditor of county in which the sale of such lands took place, shall execute to purchaser, his heirs or assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in said purchaser, his heirs or assigns, an absolute estate in fee simple in such land, subject, however, to all the claims which the state may have thereon for taxes, or other liens or incumbrances; and such deeds shall be executed by the county auditor under his hand, and shall be conclusive evidence of the truth of all the facts therein recited and prima facie evidence of the regularity of all the proceedings from the assessment and valuation of the land by the assessor up to the execution of the deed, and such deed shall be substantially in the following or other equivalent form:

997. County Auditor's Tax Deed.

WHEREAS, A. B. did on the day of , 19 , produce to the undersigned C. D., county auditor of the county of in the state of North Dakota, a certificate of purchase in writing, bearing the date of the day of , 19 , signed by E. F., who at the last-mentioned date was county auditor of said county, from which it appears that did on the day of , 19 , purchase at public auction at the office of the county auditor [or, the usual place of holding court in the same building] the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to for the sum of dollars, being the amount of taxes, penalties and costs charged against said land, including personal taxes specified in the list and in the advertisement, constituting a lien thereon for the year [or, years] 19 , to wit: [*here insert the description of the land offered for sale*], and it appearing that the said A. B. is the legal owner of the said certificate of purchase, and the time fixed by law for redeeming the land therein described,

having now expired, and proof of the notice of the expiration of the period of redemption having been filed in the office of the county auditor, prior to the maturing of such certificate as provided by law, and said land not having been redeemed from such purchase pursuant to law, and the said A. B. having demanded a deed for the tract mentioned in said certificate, and which was the smallest or least quantity of the said tract above described that would sell for the total amount of taxes, penalties and costs charged against it, including any personal taxes specified in the list and in the advertisement of the sale of said land, which were a lien upon it, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year [or, years] 19 , and that said lands had been legally advertised for taxes and were sold on the day of , 19 .

Now, THEREFORE, this indenture made this day of , 19 , between the state of North Dakota, by C. D., as county auditor of said county, of the first part, and said A. B. of the second part:

WITNESSETH, that the said party of the first part for and in consideration of the premises and the sum of one dollar in hand paid, has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said party of the second part, heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to wit: [*describe the land*]. TO HAVE AND TO HOLD said mentioned tract or parcel of land with the appurtenances thereto belonging to the said party of the second part, heirs and assigns forever, in as full and ample manner as the said county auditor of said county is empowered by law to sell the same.

IN TESTIMONY WHEREOF, the said C. D., as county auditor of said county of , has hereunto set his hand on the day and year aforesaid.

[*Signature.*]

County Auditor, County, North Dakota.

Attest:

[*Signature and Seal.*]

In case the land is bid in for the county and the certificate assigned, the language of such deed inappropriate to such sales shall be stricken out and the following inserted in lieu thereof:

"Offer for sale to the highest bidder the following described tract or parcel of real property: [*insert description*], which property was returned delinquent for the non-payment of taxes for the year 19 , amounting to dollars, including interest and penalty thereon and the costs charged against said land, including personal property taxes specified in the list and in the advertisement constituting the lien thereon, for the year [or, years] 19 , and no one bidding upon such offer an amount equal to that for which said piece or parcel of land was subject to be sold, the same was bid in for the county. And it appearing by said certificate that the right, title and interest of the county in said tract or parcel of land acquired therein at said sale was on the day of , 19 , assigned to for the sum of dollars, being the amount due thereon at that time."

Ibid., § 1591.

When any deed is presented to the county auditor for transfer he shall ascertain from the books and records in his office if there be delinquent taxes due on the lands described therein, or special assessments due thereon, or if it has been sold for taxes and if there are delinquent taxes or special assessments due or installments of special assessments due, he shall certify to the same, and when the receipt of the county treasurer shall be produced for the said delinquent taxes or special assessments or installments of special assessments, and for any other delinquent taxes or special assessments, or installments of special assessments, that may be in the hands of the county auditor for collection, the county auditor shall enter on every deed of real property so transferred over his official signature, "delinquent taxes and special assessments or installments of special assessments paid and transfer entered," or if the land described has been sold for taxes, "paid by sale of the land described within," or if it is an instrument entitled to record without regard to taxes, "transfer entered," and unless such entry is made upon any deed the register of deeds shall refuse to receive or record the same. A violation of the provisions of this section by the register of deeds is a misdemeanor, and he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained. *Ibid.*, § 1597.

When the transfer of any land or town lot or any part thereof becomes necessary for the reason that a sale or conveyance is of less value than the whole tract or lot, or part thereof as charged in the tax list, said county auditor shall transfer the same whenever the seller and purchaser agree thereto in writing, signed by them, or personally appear before the auditor and agree upon the amount of valuation to be transferred therewith; but if the seller and purchaser do not agree as to the amount of valuation to be transferred, the auditor shall make such divisions of the valuation as may appear to him just. If the county auditor is satisfied that the proportion of valuation agreed by the parties in interest to be transferred is greater than the proportional value of the land or lot to be transferred therewith, and that such agreement was made by collusion of the parties and with a view fraudulently to evade the payment of any taxes which might be legally assessed on the entire tract or lot, he may refuse to make such transfer, and when any such transfer has been procured by fraudulent agreement the same shall be canceled by the auditor and the land or lot so transferred be charged with taxes in the same manner as though said transfer had not been made. *Ibid.*, § 1598.

Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom for the time being such title may be vested and pass with the title. *Ibid.*, § 4924.

For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner. *Ibid.*, § 6597.

No agreement for the sale of real property, or of an interest therein, is valid unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or his agent thereunto authorized in writing. *Ibid.*, § 5407.

An estate in real property other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by his agent thereunto authorized by writing. *Ibid.*, § 4968.

Any foreign or domestic corporation may in its by-laws empower any one or more of its officers severally or conjointly to execute in its behalf conveyances, transfers, assignments, releases, or other instruments, affecting liens upon, titles to or interests in real estate. *Ibid.*, § 4969.

In the absence of any by-laws the president or secretary of any corporation, and the president, secretary, treasurer or cashier of any loan, trust

or banking corporation may execute such instruments when authorized by resolution of the board of directors. *Ibid.*, § 4970.

The signature of a corporation to any instrument mentioned in section 4969 shall be as follows:

998. Form of Signature of Corporation.

..... [full name of corporation].

By [some officer authorized by resolution or the by-laws of the corporation to execute and acknowledge such instrument].

..... [official designation of person signing].

Attest:

....., Secretary.

[SEAL.]

Ibid., § 4972.

A grant of an estate in real property may be made in substance as follows:

999. Deed, Statutory Form.

THIS GRANT, made the day of in the year , between A. B., of , of the first part, and C. D., of , of the second part, WITNESSETH, that the party of the first part hereby grants to the party of the second part in consideration of dollars, now received, all the real property situated in , and bounded [or, described] as follows:

WITNESS, the hand of the party of the first part.

A. B.

Ibid., § 4973.

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed the following covenant* and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied unless restrained by express terms contained in such conveyances:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. *Ibid.*, § 4976.

Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration, acquires a title or lien by an instrument that is first duly recorded. *Ibid.*, § 4977.

A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. *Ibid.*, § 4978.

A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof unless a different intent appears. *Ibid.*, § 4979.

A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. *Ibid.*, § 4982.

* So in original.

Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all incumbrances, when an incumbrance appears of record to exist thereon whether known or unknown to him shall be liable to an action of contract, to the grantee, his heirs, executors, administrators, successors, grantees or assigns, for all damages sustained in removing the same. *Ibid.*, § 4987.

Any instrument affecting the title to or possession of real property may be recorded under this chapter (§§ 5001-5042). *Ibid.*, § 5001.

Instruments entitled to be recorded must be recorded by the register of deeds of the county in which the real property affected thereby is situated. *Ibid.*, § 5005.

An instrument is deemed to be recorded when it is deposited in the register's office with the proper officer for record. *Ibid.*, § 5006.

The unorganized counties of the state in any judicial subdivision are attached to and made a part of the county where the court is held for such subdivision for the purpose of filing and recording all deeds and other instruments, so long as such counties remain unorganized. *Ibid.*, § 5007.

Every conveyance by deed, or otherwise, of real estate within this state, shall be recorded in the office of the register of deeds of the county where such real estate is situated, and every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, deed of quit claim and release, of the form in common use, or otherwise, is first duly recorded; or as against any attachment levied thereon, or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears of record, prior to the recording of such conveyance. Every conveyance aforesaid heretofore executed, and not so recorded, and which shall not be so recorded within three months from the taking effect of this article, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, claiming under or through a deed of quit claim and release, of the form in common use, heretofore so recorded, or which may be recorded before such prior conveyance. The fact that such first recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms of a deed of quit claim and release aforesaid, shall not affect the question of good faith of subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof; but all deeds and other instruments affecting real estate, situated in any unorganized county, may be recorded in the county to which such unorganized county is attached for judicial purposes, and records of such instruments which have been or shall be so made, shall have the same effect as if recorded in a county where the premises are situated. *Ibid.*, § 5038.

The term "conveyance" as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or encumbered, or by which the title to any real property may be affected, except wills and powers of attorney. *Ibid.*, § 5039.

No instrument containing a power to convey or execute instruments affecting real property which has been recorded is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded. *Ibid.*, § 5040.

The recording and deposit of an instrument are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording; and all instruments entitled to record, the record thereof, or a duly certified transcript of such record, or copy of such instrument, shall be admissible in evidence in all the courts of this state, and may be read in evidence without further proof. *Ibid.*, § 5041.

An unrecorded instrument is valid as between the parties thereto and those who have notice thereof; but knowledge of the record of an instrument out of the chain of title does not constitute such notice. *Ibid.*, § 5042.

No lease or grant of agricultural land for a longer term than ten years, in which shall be reserved any rent or service of any kind, shall be valid. No lease or grant in any town or city for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid. *Ibid.*, § 4746.

Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee. *Ibid.*, § 4762.

An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold. *Ibid.*, § 4766.

Except when the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on a navigable lake or stream, takes to the edge of the lake or stream at low water mark, and all navigable rivers shall remain and be deemed public highways. In all cases when the opposite banks of any stream not navigable belong to different persons the stream and the bed thereof shall become common to both. *Ibid.*, § 4809.

An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown. *Ibid.*, § 4810.

A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor. *Ibid.*, § 4952.

A grant duly executed is presumed to have been delivered at its date. *Ibid.*, § 4953.

A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute; and the instrument takes effect thereupon, discharged of any condition on which the delivery was made. *Ibid.*, § 4954.

Though a grant is not actually delivered into the possession of the grantee it is yet to be deemed constructively delivered in the following cases:

1. When the instrument is by the agreement of the parties at the time of execution understood to be delivered and under such circumstances that the grantee is entitled to immediate delivery; or,

2. When it is delivered to a stranger for the benefit of a grantee and his assent is shown or may be presumed. *Ibid.*, § 4957.

Words of inheritance are not requisite to transfer a fee in real property. *Ibid.*, § 4964.

An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of seizin, quiet enjoyment, further assurance, general warranty and against incumbrances. *Ibid.*, § 5402.

The covenants mentioned in the last section must be in substance as follows:

The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will on demand execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same. *Ibid.*, § 5403.

No covenants of warranty shall be considered as broken by the existence of a highway or railway upon the land conveyed, unless otherwise particularly specified in the deed. *Ibid.*, § 5404.

The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty or of quiet enjoyment in a grant of an estate in real property is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such portion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

3. Any expense properly incurred by the covenantee in defending his possession. *Ibid.*, § 6566.

The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole; or, in the latter case, interest on a like amount. *Ibid.*, § 6567.

1000. Warranty Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , part of the first part, and , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by said part of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto the said part of the second part, heirs and assigns forever, all tract or parcel of land lying and being in the county of , and state of North Dakota, and described as follows, to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the said part of the second part, heirs and assigns forever; and the said , part of the first part, for heirs, executors and administrators, do covenant with the part of the second part, heirs and assigns, that well seized in fee of the land and premises aforesaid, and ha good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances and the above-bargained and granted land and premises in the quiet and peaceable possession of said part of the second part, heirs and assigns, against all persons lawfully claiming, or to claim the whole or any part thereof, the said part of the first part will warrant and defend.

IN WITNESS WHEREOF, the said part of the first part hereunto set hand , the day and year first above written.

[*Signature.*]

Signed and delivered in the presence of

[*Signatures.*]

1001. Quitclaim Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , part of the first part, and , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by said part of the second part, the receipt whereof is hereby acknowledged, do grant, bargain, sell, release and quitclaim to the said part of the second part, heirs and assigns forever, all right, title, interest, claim or demand in and to the following tract or parcel of land lying and being in the county of , and state of North Dakota, and described as follows, to wit: [*description*]

To HAVE AND TO HOLD the above quitclaimed premises, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said part of the second part, heirs and assigns forever. And the said .

IN WITNESS WHEREOF, the said part of the first part hereunto set hand , the day and year first above written.

[*Signatures.*]

Signed and delivered in presence of

[*Signatures.*]

OHIO.

A deed, mortgage, or lease of any estate or interest in real property, shall be signed by the grantor, mortgagor, or lessor. Annotated Revised Statutes of 1908, § 4106.

A power of attorney for the conveyance, mortgage, or lease of any estate or interest in real property, shall be signed in the same manner as deeds, mortgages, and leases. *Ibid.*, § 4108.

A deed, mortgage, or lease of any estate or interest in real property, made by virtue of a power of attorney, shall contain name of grantor, mortgagor, or lessor, and shall convey, mortgage, or lease estate or interest of grantor, mortgagor, or lessor in real property so conveyed, mortgaged, or leased, as fully as if such deed, mortgage, or lease were executed by grantor, mortgagor, or lessor in person, but at any time previous to conveyance, mortgage, or lease, the grantor, mortgagor or lessor may revoke power of attorney so far as relates to interest of grantor, mortgagor, or lessor therein. *Ibid.*, § 4109.

No deed of real estate executed by any person acting for another, under power of attorney duly recorded, shall be invalid or defective because he is named therein, as such attorney, as the grantor, instead of his principal; nor because his name, as such attorney, is subscribed thereto, instead of name of his principal; nor because the certificate of acknowledgment, instead of setting forth that the deed was acknowledged by the principal, by his attorney, sets forth that it was acknowledged by the person who executed it, as such attorney; but all such deeds so executed shall be as valid and effectual, in all respects, within the authority conferred by such powers of attorney, as if they had been executed by the principals of such attorneys, in their own proper persons. *Ibid.*, § 4110.

When real estate has been sold at tax sale, and purchaser has received deed therefor, and such real estate has been placed upon the tax duplicate in name of such purchaser, or those claiming under him, who openly and notoriously claim title and ownership to such property, and pay taxes thereon, same shall, against any title acquired by deed executed after such tax sale, be held prima facie evidence of the possession of such real estate by such purchaser, or those holding under him, from date of such sale until same is set aside or redeemed; and the knowledge, by a person acquiring title by deed executed after such tax sale, of payment of taxes, and claim of title and ownership, shall, as to such person, be taken as conclusive proof of possession. *Ibid.*, § 4114.

Power of attorney for the conveyance, mortgage, or lease of estate or interest in real property, shall be recorded in office of recorder of county in which such real property is situated, previous to execution of deed, mortgage, or lease by virtue of such power of attorney. *Ibid.*, § 4131.

No instrument containing power of attorney for the conveyance, mortgage, or lease of estate or interest in real property, which has been recorded, is to be deemed revoked by any act of person by whom it was executed, unless instrument containing revocation is also recorded in same office in which the instrument containing power of attorney was recorded. *Ibid.*, § 4132.

All other deeds and instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments, executed agreeably to the provisions of this chapter, shall be recorded in office of recorder of county in which the premises are situated, and until so recorded or filed for record, same shall be deemed fraudulent, so far as relates to a subsequent bona fide purchaser having, at time of purchase, no knowledge of the existence of such former deed or instrument. *Ibid.*, § 4134.

1002. Warranty Deed, with Release of Dower.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, of _____ in the state of _____, in consideration of _____ dollars, to me paid by _____ of _____, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said _____ all that parcel of land situate in said _____, and bounded as follows, etc. [*here insert description*].

TO HAVE AND TO HOLD the granted premises, with all the rights, easements, and appurtenances thereto belonging to the said _____, his heirs and assigns, to his and their own use and behoof forever.

And I do hereby, for myself and my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee of the granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same as aforesaid, and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said grantee, his heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid, I, _____, of _____, wife of the said _____, do hereby release unto the grantee and his heirs and assigns all right of or to both dower and homestead in the granted premises.

IN WITNESS WHEREOF, we, the said _____ and _____, have hereunto set our hands and seals this _____ day of _____, 19____. [SEAL.]

1003. Quitclaim Deed, with Release of Dower.

KNOW ALL MEN BY THESE PRESENTS, that _____, in consideration of _____, to _____ paid by _____, the receipt whereof is hereby acknowledged, do hereby, remise, release, and forever quitclaim to the said _____, _____ heirs and assigns forever, [*here insert description*], and all the estate, title, and interest of the said _____, either in law or in equity, of, in, and to the said premises: TOGETHER with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof: TO HAVE AND TO HOLD the same to the only proper use of the said _____, _____ heirs and assigns forever.

IN WITNESS WHEREOF, the said _____ hereby release _____ right and expectancy of dower in the said _____ premises. _____ ha hereunto set

hand , this day of , in the year of our Lord one thousand nine hundred and .

Signed and sealed in the presence of us

OKLAHOMA.

Special assessments for street improvement by paving and other work, and each installment thereof, and the interest thereon are declared to be a lien against the lots and tracts of land so assessed from the dates of the ordinances levying the same co-equal with the lien of other taxes, and prior and superior to all other liens against such lots or tracts and such lien shall continue until such assessments and interest thereon shall be fully paid, but unmatured installments shall not be deemed to be within the terms of any general covenant or warranty. Compiled Laws of 1909, § 726.

Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title. *Ibid.*, § 7364.

As between grantor and grantee of any land where there is no express agreement as to who shall pay the taxes, taxes on any real estate becoming a lien on such real estate on the 15th day of October of each year, between the 1st day of March and the 15th day of October next following, the grantor shall pay the same but if conveyed between the 15th day of October and the 1st day of March the grantee shall pay the same. *Ibid.*, § 7680.

Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the tendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor. *Ibid.*, § 2214.

Every person who buys or sells, or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof, or the person making such promise or covenant has been in possession, or he and those by whom he claims have been in possession of the same, or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor. *Ibid.*, § 2215.

Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee-simple or an absolute fee. *Ibid.*, § 7213.

An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold. *Ibid.*, § 7217.

Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream, at low-water mark, and all navigable rivers shall remain and be deemed public highways. In all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both. *Ibid.*, § 7254.

An owner of land, bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown. *Ibid.*, § 7255.

Any instrument affecting real estate may be made by an attorney in fact, duly appointed and empowered as hereinafter provided. *Ibid.*, § 1186.

No deed, or other conveyance relating to real estate or any interest therein, other than for a lease for a period not to exceed one year, shall be valid until reduced to writing and subscribed by the grantors. *Ibid.*, § 1187.

Deeds executed by any sheriff or other officer, for real estate sold under execution, order of sale, or pursuant to any order or decree of court, shall be executed and recorded in the manner and with like effect as other deeds. *Ibid.*, § 1192.

Except as hereinafter provided, no recording shall be necessary to the validity of any deed, mortgage or contract relating to real estate as between the parties thereto; but no deed, contract, bond, lease, or other instrument relating to real estate, other than a lease for a period not exceeding one year and accompanied by actual possession, shall be valid as against third persons unless recorded as herein provided; except actual notice to such third persons shall be equivalent to due recording. *Ibid.*, § 1195.

Every instrument purporting to be an absolute or qualified conveyance of real estate or any interest therein, but intended to be defeasible or as security for the payment of money, shall be deemed a mortgage and must be recorded and foreclosed as such. *Ibid.*, § 1196.

Every instrument explanatory of any deed or other writing purporting to be a conveyance but intended to be defeasible or as security for the payment of money, shall be deemed a part thereof, and must be filed and recorded therewith; and unless such instruments are so filed and recorded together, they and each of them shall have no other effect than an unrecorded mortgage, and the recording of the principle* instrument shall secure no rights to the holder thereof. *Ibid.*, § 1197.

Any person purchasing or taking any security against real estate in good faith and without notice from one holding under an instrument purporting to be a conveyance, but intended as security for the payment of money, and which instrument has been duly recorded without any other instrument explanatory thereof, shall be protected to the extent of the purchase price paid or actual outlay occasioned with lawful interest, against all persons except those in actual possession at the time of such purchase or outlay. *Ibid.*, § 1198.

Any conveyance, other than as above provided, by one holding under an instrument purporting to be a conveyance, but intended as security, shall be deemed and treated as an assignment and transfer of the mortgage rights of and indebtedness due the maker thereof. *Ibid.*, § 1199.

A quitclaim deed, made in substantial compliance with the provisions of this Act, shall convey all the right, title and interest of the maker thereof in and to the premises therein described. *Ibid.*, § 1201.

A warranty deed, made in substantial compliance with the provisions of this Act, shall convey to the grantee, his heirs or assigns, the whole interest of the grantor in the premises described, and shall be deemed a covenant on the part of the grantor, that at the time of making the deed he is legally seized of the indefeasible estate in fee simple of the premises and has good right and full power to convey the same; that the same are clear of all incumbrances and liens, and that he warrants the grantee, his heirs and assigns, the quiet and peaceable possession thereof, and will defend the title thereto against all persons who may lawfully claim the same, and the covenants and warranty shall be obligatory and binding upon any such grantor, his heirs and personal representatives as if written at length in such deed. *Ibid.*, § 1202.

A power of attorney in fact for the conveyance of real estate or any interest therein, shall be executed and recorded in the manner required by this Act for the execution and recording of deeds, and shall be recorded in the county where the land is situated, and no deed executed by an attorney in fact shall be received for record or recorded until the power under which the same is executed has been duly filed for record in the same office; and the recording of any deed shall be of no effect for any purpose until the power under which it is executed has been duly filed for record in the same office. *Ibid.*, § 1203.

In all cases where there is a recovery of land or any interest therein, adverse to any warranty deed thereto, the judgment by which such recovery is had shall not be effective, or become the basis of an action, against

* So in original.

previous grantors other than those who are parties thereto, or have been notified in writing of the pendency thereof twenty days before such judgment is entered. *Ibid.*, § 1204.

In all cases where an action is brought against a grantee to recover real estate conveyed to him by warranty deed he must notify the grantor, or person bound by the warranty, that such suit has been brought, at least twenty days before the day of trial, which notice shall be in writing and shall request such grantor or other person to defend against such action; and in case of failure to give such notice there shall be no further liability upon such warranty, except when it is clearly shown that it was impossible to make service of such notice. *Ibid.*, § 1205.

Where any grantor applies in any action to defend his warranty or fails to appear after due notice, the court shall determine all the rights of all the parties, and in case the recovery is adverse to the warranty, the warrantee shall recover of the warrantor the price of the land paid for the conveyance at the time of the warranty, the value of all improvements lost, if any, and all sums necessarily expended, including a reasonable attorney fee, and interest at the rate of ten per centum on all sums so paid from the time of payment. *Ibid.*, § 1206.

If a warrantor, or other person bound by a warranty, shall fail to appear and defend after due notice as above provided the warrantee may defend the action and recover in a separate suit all sums expended the same as he might do in the same suit, as provided in this act. *Ibid.*, § 1207.

In all cases where copies of instruments affecting real estate might lawfully be used in evidence, copies of the same, duly certified from the records by the register of deeds may be received in evidence; and if the same need not be recorded to be valid for the purpose for which such evidence is offered, a copy duly verified by oath or affidavit of any person knowing the same to be a true copy may be received in evidence. *Ibid.*, § 1209.

No instrument affecting the title to real estate shall be filed for record or recorded unless plainly printed or written or partly printed and partly written in the English language. *Ibid.*, § 1210.

Corporations, as well as individuals, may make and deliver instruments affecting real estate by an attorney in fact. *Ibid.*, § 1211.

Every instrument affecting real estate or authorizing the execution of any deed or other instrument relating thereto, executed by a corporation or its attorney in fact in substantial compliance with this Act shall be valid and binding upon the grantor, notwithstanding any omission or irregularity in the proceedings of such corporation or any of its officers or members, and without reference to any provision in its constitution or by-laws. *Ibid.*, § 1212.

Every conveyance of real estate or any interest therein, or other instrument in any way affecting the same, made without a fair and valuable consideration, or made in bad faith, or for the purpose of hindering, delaying or defrauding creditors, shall be void as against all persons to whom the maker is at the time indebted or under any legal liability. *Ibid.*, § 1213.

Every estate in land which shall be granted, conveyed or demised by deed shall be deemed an estate in fee simple and of inheritance, unless limited by express words. *Ibid.*, § 1214.

A warranty deed to real estate may be substantially in the following form, to wit:

1004. Warranty Deed, Statutory Form.

KNOW ALL MEN BY THESE PRESENTS:

That _____, part of the first part, in consideration of the sum of _____ dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto _____ the following described real property and premises, situate in _____ county, state of Oklahoma, to wit:

together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

TO HAVE AND TO HOLD said described premises unto the said part of the second part, heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this day of , 19 .

[Signature.]

Ibid., § 1226.

A quitclaim deed to real estate may be substantially the same as a warranty deed, with the word "quitclaim" inserted in connection with the words "do hereby grant, bargain, sell and convey," as follows: "Do hereby quitclaim, grant, bargain, sell and convey," and by omitting the words "and warrant the title to the same." Ibid., § 1227.

Every deed, or other instrument affecting real estate made by a corporation must have the name of such corporation subscribed thereto either by an attorney in fact or by the president or a vice-president of such corporation, and when made by a public corporation the name of such corporation must be subscribed by the chief officer thereof. Ibid., § 1228.

Every deed, or other instrument affecting real estate, executed by a corporation, except when executed by an attorney in fact, must be attested by the secretary or clerk of such corporation. Ibid., § 1229.

The deed of land sold for taxes shall be signed and executed by the county treasurer in his official capacity; and when substantially thus executed and recorded, in the proper record of titles to real estate, shall vest in the purchaser a full right, title and interest in and to said lands. Such deed shall be presumptive evidence in all the courts of the State, in all suits and controversies in relation to the rights of the purchaser, his heirs or assigns to the land conveyed of the followings facts:

First. That the real property deeded was subject to taxation for the year or years stated in the deed.

Second. That the taxes were not paid at any time before the sale.

Third. That the real property deeded had not been redeemed from sale at the date of the deed.

Fourth. That the property had been listed and assessed.

Fifth. That the taxes were levied according to law.

Sixth. That the property was sold for taxes, as stated in the deed, and was duly advertised before being sold, and to defeat the deed it must be clearly plead and clearly proven that some one of the above named six requisites was wholly omitted and not done and a showing that any one or all of them was irregularly done will not be sufficient to defeat the deed.

Such deed shall be held, in all such cases, as conclusively proving the following facts:

First. That the manner in which the listing, assessment, levy and notice of sale were conducted was as to manner, and form or procedure, regular in all respects, and conducted as the law directs.

Second. That the grantee named in the deed or his assigns* was the purchaser.

Third. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have performed any matter in connection therewith.

To defeat the deed, the person desiring to set the same aside and recover the land, or to resist the recovery of possession by the holder of the deed in addition to showing clearly the entire failure to do some one or all the things

* So in original.

of which the tax deed is made presumptive evidence, must show that he or the person under whom he claims, had the right to redeem the land from tax sale at the time the deed was made, and must, when his action to set aside the tax deed is brought, or a defense to a recovery of possession is plead, tender in open court for the use of the holder of the tax deed, all taxes, penalties, interests and costs, which the party seeking to redeem would be bound to pay if he was then redeeming the land from tax sale, and on failure so to do, his action or defense, as the case may be, shall be dismissed. The rule that tax proceedings are to be strictly construed as against the tax purchaser, shall not apply to proceedings under this Act, but in all courts its provisions shall be liberally construed, to the end that its provisions and all proceedings thereunder shall be sustained. The tax deed shall be substantially in the following form, to-wit:

1005. Tax Deed, Statutory Form.

WHEREAS, A. B., on the day of , A. D. , produce to the undersigned C. D., treasurer of the county of , in the state of Oklahoma, a certificate of purchase in writing, bearing the date of the day of , signed by E. F., who at the last mentioned date was treasurer of said county, from which it appears that did on the day of , purchase at public auction, at the door of the courthouse in said county, the tract, parcel or lot of land lastly in this indenture described, and which tract, parcel or lot was sold to for the sum of , being the amount due on the following tract or lot of land, returning delinquent for non-payment of taxes, costs and charges for the year , to wit: [*here insert the land offered for sale*], and it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges, as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book, or duplicate for the year , and that said lands had been legally advertised for sale for said taxes and were sold on the day of ,

NOW, THEREFORE, this indenture, made this day of , , between the state of Oklahoma, by C. D., the treasurer of said county, of the first part, and the said A. B., of the second part, WITNESSETH, that the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey to the said party of the second part, heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to wit: [*describing the land*], to have and to hold said mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

IN TESTIMONY WHEREOF, the said C. D., treasurer of the said county of _____, has hereunto set his hand and seal on the day and year aforesaid.

[*Signature and seal.*]

Attest:

[*Seal.*]

Ibid., § 7652.

OREGON.

Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, or by his lawful agent or attorney, and recorded as directed in this chapter (§§ 5333-5386). Ballinger and Cotton's Annotated Codes and Statutes of 1901, § 5333.

A deed of quitclaim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale. Ibid., § 5335.

The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of real estate shall pass all the estate of grantor, unless intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant. Ibid., § 5336.

A conveyance by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. Ibid., § 5337.

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. Ibid., § 5338.

No grant or conveyance of lands or interest therein shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely. Ibid., § 5340.

Every conveyance shall be entitled to be recorded in the county in which the lands lie. Ibid., § 5355.

The county clerk shall certify upon every conveyance recorded by him the time when it was received and a reference to the book and page where it is recorded, and every conveyance shall be considered as recorded at the time it was so received. Ibid., § 5357.

Every conveyance of real property within this state, which shall not be recorded as provided in this title within five days thereafter, shall be void against any subsequent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded. Ibid., § 5359.

The record of a conveyance duly recorded, or a transcript thereof duly certified by the county clerk, in whose office the same may have been recorded, may be read in evidence in any court in this state, with the like force and effect as the original conveyance; but the effect of such evidence may be rebutted by other competent testimony. Ibid., § 5360.

When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office for the recording of deeds and mortgages of the county where the lands lie. Ibid., § 5361.

Every letter of attorney, or other instrument containing a power to convey lands, as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, may be recorded in the county clerk's office of any county in which the lands to which such power or con-

tract relates may be situated; and the record thereof when recorded, or the transcript of such record duly certified, may be read in evidence in any court in this state without further proof of the same. *Ibid.*, § 5370.

No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded. *Ibid.*, § 5371.

Patents from the United States or of this state for lands within this state, decrees of courts of equity in this state requiring the execution of a conveyance of real estate within this state, and approved lists of lands granted to this state, or to corporations in this state, and conveyances executed by any officer of this state by authority of law, of lands within this state, shall be entitled to be recorded in the record of deeds of the county in which the lands lie, in like manner and with like effect as conveyances of land. *Ibid.*, § 5373.

The recorder of conveyances in Multnomah county shall have the care, custody, and control of the books, papers, and files, and records of contracts, powers of attorney, deeds, mortgages of both real and personal property, and of mechanics', laborers', and materialmen's and other liens in Multnomah county, and shall perform all the duties in regard to the filing, recording, and indexing of deeds, mortgages, contracts, powers of attorney, and mechanics', laborers', materialmen's and other liens in Multnomah county. *Ibid.*, § 2579.

The sheriff of each county shall be tax collector thereof. *Ibid.*, § 3093.

At the expiration of three years from date of sale of real property for taxes the tax collector shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase. The sheriff shall collect one dollar for each deed made by him on such sales, but any number of parcels of land bought by one person may be included in one deed, if desired by the purchaser. The deed shall contain a description of the property sold, as described in the assessment roll, the year in which the tax was levied, to whom the same was assessed; that the tax was unpaid at the time of the sale, and that no redemption has been made; and such deed shall vest in the purchaser all the right, title, and interest and estate of the former owner, owners, lien holders, claimants, or other person or persons interested in the land, and also all the right, title, interest, and claim of the state and county thereto, and shall be prima facie evidence in all the courts of this state in all controversies in relation to the rights of the purchaser, or his heirs or assigns, to the land thereby conveyed, of the following facts: (1) That the real property conveyed was subject to tax for the year or years stated in the deed; (2) that the taxes were not paid at any time before the sale; (3) that the real property conveyed has not been redeemed from the sale at the date of the deed; (4) that the property had been listed and assessed; (5) that the taxes were levied according to law; (6) that the property was duly advertised for sale; (7) that the property was sold for taxes as stated in the deed;—and it shall be conclusive evidence of the following facts: (1) That the manner in which the listing, assessment, levy, notice, and sale were conducted was in all respects as the law directed; (2) that the grantee named in the deed was the purchaser; (3) that all the prerequisites of law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed, by the deed from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser were done, except in regard to the points named in this section wherein the deed shall be presumptive evidence only. And in all controversies and suits involving the title to real property claimed and held under and by virtue of a deed executed substantially as aforesaid by the tax collector, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the said title, either that the said real

property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of this title, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the law of this state; or, that there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property; but no person shall be permitted to question the title acquired by a tax deed without first showing that he, or the person under whom he claims, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title as aforesaid. In any case where a person had paid his taxes, and through mistake made in the tax collector's book or in the receipt the land upon which the taxes were paid was afterwards sold, the tax deed shall not convey title; and in all cases where the owner of lands sold for taxes shall resist the validity of such tax title such owner may prove fraud committed by the officer selling the same, or in the purchaser, to defeat the same; and if fraud is so established such sale and title shall be void. *Ibid.*, § 3127.

1006. Warranty Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , the part of the first part, and , the part of the second part, WITNESSETH: That the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid, by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said part of the second part, and to heirs and assigns forever, all th certain lot or piece or parcel of land, situate, lying, and being in the , county of , state of , and bounded and particularly described as follows, to wit: [*here insert description*]. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and the reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, , property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said part of the second part, heirs and assigns forever. And the said part of the first part do hereby covenant, that will warrant and defend right, title, and interest in and to the said premises, against the facts and deeds of the said part of the first part, and all persons claiming by, from, under, or through the said part of the first part, unto the said part of the second part, heirs and assigns forever.

IN WITNESS WHEREOF, the said part of the first ha hereunto set hand and seal , the day and year first above written.

Signed, sealed, and delivered in presence of

[SEAL.]

[SEAL.]

[SEAL.]

PENNSYLVANIA.

There shall be an office of record in each county, which shall be called and styled, "the office for recording of deeds," and the recorder shall duly attend the same, and shall provide parchment, or good large books of large paper, wherein he shall record all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this act. Stewart's Purdon's Digest to 1903 (13th ed.), p. 1147, § 1.

Every recorder of deeds shall keep a fair book, in which he shall immediately make an entry of every deed or writing brought into his office to be recorded, mentioning therein the date, the parties and the place wherein the lands, tenements or hereditaments granted or conveyed by the said deed or writing are situate, dating the same entry on the day in which such deed or writing was brought into his office; and shall record all such deeds and writings in regular succession, according to their priority of time in being brought into the said office. *Ibid.*, p. 1147, § 3.

In addition to the indexes which the recorder of deeds in each county is required to keep, he shall keep in his office, two general indexes of all deeds recorded therein, in one of which, to be known as the direct index, he shall enter in their order, the name of the grantor, the name of the grantee, the volume and page wherein the deed is recorded, and in the other, to be known as the *ad sectum* index, he shall enter in their order, the name of the grantee, the name of the grantor, the volume and page wherein the deed is recorded. He shall in like manner also keep two general indexes, one direct and the other *ad sectum*, of all mortgages recorded in his office. Said indexes shall be arranged alphabetically. *Ibid.*, pp. 1147, 1148, § 4.

It is the duty of the recorder to index in its appropriate place and manner every deed and mortgage recorded in his office, at the time the same is recorded; and in case he neglects to do so, he and his sureties shall be liable in damages to any person aggrieved by such neglect. *Ibid.*, p. 1148, § 5.

The entry of recorded deeds and mortgages in said indexes, respectively, shall be notice to all persons of the recording of the same. *Ibid.*, p. 1148, § 6.

In any proceeding at law or in equity, in any of the courts of this commonwealth having jurisdiction, if said court shall order a conveyance to be executed by either of the parties to said proceeding of his or her interest in any lands or tenements to any other party or person, and the party so ordered shall neglect or refuse to comply with the said order and make the said conveyance, or shall die, flee the jurisdiction, or become insane without having complied therewith, the said court may order and direct that such conveyance be made by the sheriff, prothonotary or clerk, or by a trustee specially appointed for that purpose; and the said conveyance having been duly executed by the said sheriff, prothonotary, clerk or trustee, shall be good and effective to convey the interest of the recusant, neglecting, deceased, persons fleeing the jurisdiction, or insane party, to the extent ordered by the court, the same as if it had been duly executed and delivered by such party personally; but no such order shall be made, in case of the decease of such party, until notice shall have been given to his or her heirs and legal representatives, by process duly served, if resident within the commonwealth, or, if not, by publication and copy mailed to the last known address of the same, according as the court shall order and direct. *Ibid.*, p. 1150, § 19.

All bargains and sales, deeds and conveyances of lands, tenements and hereditaments in this province may be recorded in the said office. *Ibid.*, p. 1150, § 21.

Any and every grant, bargain and sale, release or other deed of conveyance or assurance of any lands, tenements or hereditaments in this commonwealth, and any power or powers of attorney to make and execute such sale, conveyance, mortgage or transfer of any lands, tenements or heredita-

ments in this commonwealth, made and executed in any of the United States, may be recorded in the county in which such lands, tenements and hereditaments are situated. *Ibid.*, p. 1157, § 50.

All deeds and other conveyances of real estate, in the several counties of this commonwealth having a population of over five hundred thousand, shall be registered in the office of the county commissioners before being entered of record in the office of the recorder of deeds. *Ibid.*, p. 1167, § 97.

No deed, or other conveyance of real estate, shall be entered of record in the office of the recorder of deeds, in the several counties of this commonwealth having a population of over five hundred thousand unless the said instrument has been previously registered in the office of the county commissioners. *Ibid.*, pp. 1167, 1168, § 98.

Recorders of deeds in counties having a population of over five hundred thousand, permitting any deed, or other conveyance of real estate, to be entered of record unless previously registered in office of county commissioners, shall be guilty of a misdemeanor; but nothing in this act shall apply to counties co-extensive with cities. *Ibid.*, p. 1168, § 99.

All patents granted by the commonwealth, and all deeds of sheriffs, coroners, marshals and treasurers, and all deeds made in pursuance of a decree of any court, may be recorded in the office for recording deeds in the county where the lands lie, and the records thereof, or certified copies thereof, shall be evidence in all cases where the original deeds or patents would be evidence. *Ibid.*, p. 1169, § 102.

All deeds of county commissioners may be recorded in the office for recording of deeds in the county where the lands lie; and the records thereof, or certified copies, shall be evidence in all cases where the original deeds would be. *Ibid.*, p. 1169, § 103.

In any case in which a deed or other instrument in writing, now by law authorized to be recorded, relates to or embraces lands in more than one county in this commonwealth, and is recorded in one or more of said counties, it is lawful to take from the record of the same, an exemplification thereof, certified by the recorder of deeds, and to place the same upon record in any other county in which any of the lands or premises therein described may be; and the record of such exemplification shall be as valid and effectual in law, for all purposes of vesting title, of evidence, and of notice, as the record of the original deeds or instruments of writing are by law held and declared to be. *Ibid.*, p. 1171, § 114.

Where the owner or owners of land or lots have divided the same into lots or sub-divisions and made plots or maps thereof, and any or all of such owners are deceased, the purchaser or purchasers or their successors in title of any such lots or sub-divisions may apply to the court of common pleas of the county where the land is situated for leave to prove the same. When satisfied by the evidence, the court shall direct the map or plot to be recorded in the office of the recorder of deeds of the proper county, and the record thereof shall have the same effect as if the map had been originally recorded. If the map has been lost it may be proved as above provided and a duplicate recorded with the same effect. This act shall not affect adversely any persons who were not parties to the proceeding in court, but they shall be at liberty to show facts or titles different from those of the recorded plot in any contest between claimants. *Ibid.*, p. 1171, §§ 115-118.

All deeds and conveyances made and recorded as aforesaid, which shall appear so to be by indorsement made thereon, shall be of the same force and effect here, for the giving possession and seisin, and making good the title and assurance of the said lands, tenements and hereditaments, as deeds of feoffment, with livery and seisin, or deeds enrolled in any of the king's courts of record at Westminster. And the copies or exemplifications of all deeds so enrolled, being examined by the recorder, and certified, are as good

evidence, and as valid and effectual in law, as the original deeds themselves, or as bargains and sales enrolled in the said courts at Westminster; and copies thereof may be made use of accordingly. *Ibid.*, pp. 1171, 1172, § 121.

All deeds to be recorded in pursuance of this act, whereby any estate of inheritance in fee-simple shall be limited to the grantee and his heirs, the words *grant, bargain, sell* shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit, that the grantor was seised of an indefeasible estate, in fee-simple, free from incumbrances done or suffered from the grantor (excepting the rents and services due to the lord of the fee), as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may, in any action, assign breaches, as if such covenants were expressly inserted; but this act shall not extend to leases at rack-rent, or leases not exceeding one-and-twenty years, where the actual possession goes with the lease. *Ibid.*, p. 1172, § 122.

All deeds and conveyances made and executed within this commonwealth of or concerning any lands, tenements or hereditaments in this commonwealth, or whereby the title to the same may be in any way affected in law or equity, shall be recorded in the office for the recording of deeds where such lands, tenements or hereditaments are lying and being, within ninety days after the execution of such deeds or conveyance, and every such deed and conveyance made and executed in this commonwealth and not recorded as aforesaid, shall be adjudged fraudulent and void, against any subsequent purchaser or mortgagee for a valid consideration, or any creditor of the grantor or bargainor, in said deed or conveyance. *Ibid.*, pp. 1173, 1174, § 123.

All such deeds and conveyances made and executed out of this commonwealth, shall be recorded in the office for the recording of deeds in the county where the lands and tenements specified in such deed or deeds do lie, within the space of six months from the execution thereof, otherwise every such deed or conveyance shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, and against any creditor of the bargainor, or grantor in such deed. *Ibid.*, p. 1174, § 124.

This act shall not extend to any lease not exceeding twenty-one years, where the actual possession and occupation goeth along with the lease. *Ibid.*, p. 1174, § 125.

All deeds, conveyances and other instruments of writing, wherein it shall be the intention of the parties executing the same, to grant, bargain, sell and convey, any lands, tenements or hereditaments, situate, lying and being in any city of the first class in this commonwealth, shall be recorded in the office for recording of deeds, in the county where such lands, tenements and hereditaments are situate, lying and being; and every such deed, conveyance or other instrument of writing which shall not be recorded as aforesaid, shall be adjudged fraudulent and void, against any subsequent bona fide purchaser or mortgagee, unless such deed, conveyance or instrument of writing shall be recorded as aforesaid, before the recording of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim. *Ibid.*, pp. 1175, 1176, § 132.

No defeasance to any deed for real estate, regular and absolute upon its face, shall have the effect of reducing it to a mortgage, unless the said defeasance is made at the time the deed is made and is in writing, signed and delivered by the grantee in the deed to the grantor, and is recorded in the office for the recording of deeds and mortgages in the county wherein the lands are situated, within sixty days from the execution thereof, and such defeasances shall be recorded and indexed as mortgages by the recorder. *Ibid.*, p. 1180, § 154.

No deed or mortgage, or defeasible deed in the nature of mortgages, shall be good or sufficient to convey or pass any freehold or inheritance, or to

grant any estate therein for life or years, unless such deed is recorded where such lands lie, as hereinbefore directed for other deeds. *Ibid.*, p. 1181, § 155.

All mortgages or defeasible deeds in the nature of mortgages, made or executed for any lands, tenements or hereditaments within this commonwealth, shall have priority according to the date of recording the same, without regard to the time of making or executing such deeds; and it is the duty of the recorder to indorse the time upon the mortgages or defeasible deeds when left for record, and if two or more left upon the same day, they shall have priority according to the time they are left at the office for record; and no mortgage or defeasible deed in the nature of a mortgage, shall be a lien, until such mortgage or defeasible deed shall have been recorded, or left for record as aforesaid; but no mortgage given for the purchase-money of the land so mortgaged, shall be affected by the passage of this act, if the same be recorded within sixty days from the execution thereof. *Ibid.*, pp. 1181, 1182, § 158.

In case of any duly authorized sale, letting or mortgaging by a corporation, the same shall not be invalidated by any informality in the execution of any conveyance, mortgage or other instrument by any officer of such corporation for carrying the same into effect; but no defect in substance shall be deemed to be cured hereby. *Ibid.*, pp. 1182, 1183, § 163.

A grantee of real estate which is subject to ground-rent, or bound by mortgage or other encumbrance, shall not be personally liable for the payment of such ground-rent, mortgage or other encumbrance, unless he shall, by an agreement in writing, have expressly assumed a personal liability therefor, or there shall be express words in the deed of conveyance, stating that the grant is made on condition of the grantee assuming such personal liability; but the use of the words "under and subject to the payment of such ground-rent, mortgage or other encumbrance," shall not alone be so construed as to make such grantee personally liable as aforesaid. *Ibid.*, pp. 4044, 4045, § 72.

The right to enforce such personal liability shall not inure to any person other than the person with whom such an agreement is made, nor shall such personal liability continue, after the said grantee has bona fide parted with the encumbered property, unless he shall have expressly assumed such continuing liability. *Ibid.*, p. 4045, § 73.

Any person or persons seized of an estate tail, in possession, reversion or remainder, shall have full power to grant, bargain, sell or convey any lands, tenements or hereditaments, whereof he, she or they shall be so seized, by such manner and form of conveyance or assurance, as any person seized of an estate in fee simple may, by the laws of this state, grant, bargain, sell and convey any lands, tenements or hereditaments, whereof such person is seized of an estate in fee simple; and all and every such grants, bargains, sales and conveyances of any person or persons so seized in tail, shall be good and available, to all intents and purposes, against every person and persons, whom the grantor, bargainor or vendor might or could debar by any mode of common recovery, or by any way or means whatever. *Ibid.*, p. 1483, § 3.

Whenever any deed or deeds shall have been, or may hereafter be, executed by any tenant in tail for the purpose of barring an estate tail in any lands, tenements or hereditaments in this commonwealth, and the said deed or deeds have been or shall be entered on the records of the court of common pleas, and also recorded in the recorder's office of the county where the lands lie, such deed or deeds shall be equally available, whether entered or recorded at the instance of the grantor or grantee. *Ibid.*, p. 1485, § 7.

Whenever hereafter by any gift, conveyance or devise, an estate in fee tail would be created according to the existing laws of this state, it shall be taken and construed to be an estate in fee simple, and as such shall be inheritable and freely alienable. *Ibid.*, p. 1485, § 8.

1007. Deed, Statutory Form.

THIS DEED, made the day of , in the year nineteen hundred and , between [here insert name or names and residence of grantor or grantors] and [here insert name or names and residence of grantee or grantees];

WITNESSETH, that in consideration of dollars, in hand paid, the receipt whereof is hereby acknowledged, the said grantor do hereby grant and convey [or release and quitclaim] to the said grantee, of [here give location and description of property conveyed or released, with recital of title if desired] [if reservations, exceptions or special conditions, insert same here] [if covenants of general or special warranty, insert same here]

IN WITNESS WHEREOF, said grantor has hereunto set hand and seal, the day and year first above written.

[Signatures and seals.]

Sealed and delivered in the presence of

[Signatures.]

1008. Warranty Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand, nine hundred and , between , of the first part, and , of the second part, WITNESSETH: That the said part of the first part, for and in consideration of the sum of , lawful money of the United States of America, well and truly paid by the said part of the second part to the said part of the first part, at and before the ensembling and delivery of these presents, the receipts whereof is hereby acknowledged, granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents, grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said part of the second part, heirs and assigns [here insert description].

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof: And also, all the estate, right, title, interest, , property, possession, claim, and demand whatsoever, both in law and equity, of the said part of the first part, of, in, and to the said premises, with the appurtenances:

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said part of the second part. heirs and assigns, to the only proper use, benefit, and behoof of the said part of the second part, heirs and assigns forever.

And the said , heirs, executors, and administrators, do by these presents, covenant, grant, and agree to and with the said part of the second part, heirs and assigns forever, that , the said , heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said part of the second part. heirs and assigns, against the said , heirs, and against all and every other per-

son or persons whomsoever lawfully claiming or to claim the same, or any part thereof, shall and will warrant and forever defend.

IN WITNESS WHEREOF, the said part of the first part to these presents hereunto set hand seal . Dated the day and year first above written.

Signed, sealed, and delivered in the presence of

[SEAL.]

1009. Quitclaim Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and ninety- , between , of the first part, and , of the second part, WITNESSETH:

That the said part of the first part, for and in consideration of the sum of , lawful money of the United States of America, to , well and truly paid by the said part of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, remised, released, and quitclaimed, and by these presents remise, release, and quitclaim unto the said part of the second part, and to heirs and assigns forever, all [*here insert description*].

Together with all and singular, the tenements, hereditaments, and appurtenances therunto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof: And also, all the estate, right, title, interest, , property, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the above-mentioned and described premises, together with the appurtenances, unto the said part of the second part, and assigns forever.

IN WITNESS WHEREOF, the said part of the first part, hereunto set hand and seal , the day and year first above written. Sealed and delivered in the presence of us.

1010. Executor's Deed.

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME: , of county, Pennsylvania, executor of the last will and testament of , late of county, send greeting:

WHEREAS, the said , by his last will and testament, duly proved and recorded in the register's office of county, Pennsylvania,

Now KNOW YE, that by virtue of the power and authority aforesaid, in said will contained, and in consideration of the sum of dollars, to paid by , of the of , in the county of , and state of , the receipt whereof is hereby acknowledged, granted, sold, bargained and conveyed, and hereby grant, sell bargain and convey to the said , heirs and assigns forever, all certain piece or parcel situate in the of , county of , and state of , bounded and described as follows, to wit: [*description*]

TOGETHER with all and singular the rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said , at and immediately before the time of his decease, in law or equity, or otherwise howsoever, of, in, to or out of the same.

TO HAVE AND TO HOLD the said granted premises to the said , heirs and assigns forever. And the said , for heirs, executors and administrators, covenant with the said , heirs and assigns as aforesaid, that the said died seized of the premises herein granted, that they are free from all encumbrances done or suffered by , and that will, and heirs, executors and administrators shall, warrant and defend the same to the said , heirs and assigns, against the lawful claims and demands of all persons claiming by, from or under the said , or .

IN WITNESS WHEREOF, have hereunto set hand and seal , the day of , in the year of our Lord one thousand nine hundred and .

, *Executor of the Last Will and Testament of , Deceased*

Signed, sealed and delivered in the presence of

[Signatures.]

1011. Executor's Deed — Payment of Debts.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , execut of the last will and testament of , late of the in the , and state of , deceased, of the one part, and , of the , of the other part.

WHEREAS, the said , deceased, in lifetime, and at the time of death, was seized in demesne as of fee, of certain real estate situate in the said county of ;

AND WHEREAS, letters testamentary of the estate of the said were by the register of wills in and for said county duly granted to the said on the day of , 19 ;

AND WHEREAS, the said execut at an orphans' court held at , in and for the said county, presented a petition setting forth that the personal estate of the said testa was insufficient to pay debts as appeared by the schedule, inventory and appraisement to said petition annexed, and praying the court to award an order of sale of the real estate of the said testa situate in the county of .

WHEREUPON, it appearing manifest unto the said court that the personal estate of the said testat was not sufficient to pay just debts, it was considered and ordered by the said court, on the said day of , A. D. 19 , that all the real estate of the said testat situated in county, should be sold for the payment of debts, and that the execut should have power to subdivide the said real estate into such purparts as in judgment would best promote the sale of the said real estate.

AND WHEREAS, in pursuance of the said order, and by force and virtue of the laws of the state in such case made and provided, afterward, to wit,

on the day of , A. D. 19 , the said execut did expose the said hereinafter described real estate to sale, at public vendue or outcry, after giving notice thereof according to law, and sold , he being the highest bidder, and at the highest and best price bidden therefor; which sale on report thereof made to the judges of the said court on the day of , A. D. 19 , was confirmed, and it was considered and adjudged by the said court that the same should be and remain firm and stable forever; and good and sufficient security, approved by the said court, for the faithful application of the proceeds of sale, has been duly entered, as by the records of said court more fully and at large appears:

NOW THIS INDENTURE WITNESSETH, that the said execut as aforesaid, for and in consideration of the sum of to in hand paid by the said at and before the ensealing and delivery hereof, the receipt whereof do hereby acknowledge, granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents hereby grant, bargain, sell, alien, enfeoff, release and confirm unto the said , heirs and assigns, all the following described [*description*].

TOGETHER ALSO, with all and singular the ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also, all the right, title, interest, property, claim and demand whatever, of the said in lifetime, at and immediately before the time of deceased, in law, equity, or otherwise howsoever, of, in and to or out of the same:

TO HAVE AND TO HOLD, the said hereinbefore described hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said , heirs and assigns forever.

And the said execut as aforesaid, do covenant, promise, grant and agree, to and with the said , heirs and assigns, by these presents, that , the said execut , ha not done, committed, or knowingly or willingly suffered to be done, any act, matter or thing whatsoever, whereby the premises aforesaid, or any part thereof, is, are, shall or may be charged or encumbered, in title, charge, estate, or otherwise howsoever.

IN WITNESS WHEREOF, the said execut aforesaid, hereunto set hand and seal the day and year above written.

[*Signatures and seals.*]

Signed, sealed and delivered in the presence of

[*Signatures.*]

1012. Executor's Trustee's or Guardian's Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred , between , whereas,

NOW THIS INDENTURE WITNESSETH, that the said for and in consideration of the sum of , lawful money of the United States, to well and truly paid by the said , at or before the sealing and delivery

hereof, the receipt whereof is hereby acknowledged, granted, bargained, sold, aliened, released and confirmed, and by these presents grant, bargain, sell, alien, release and confirm unto the said [description].

TOGETHER, with all and singular ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever, in law, equity or otherwise howsoever, of, in, to or out of the same:

To HAVE AND TO HOLD, the said hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appurtenances, unto the said and assigns, to and for the only proper use and behoof of the said and assigns forever.

And the said covenant, promise and agree, to and with the said and assigns, that the said not done, committed, or knowingly or willingly suffered to be done or committed, any act, matter or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are, shall, or may be impeached, charged or encumbered, in title, charge, estate or otherwise howsoever.

IN WITNESS WHEREOF, the said hereunto set hand and seal, the day and year first above written.

[Signatures and seals.]

Sealed and delivered in the presence of us,

[Signatures.]

PHILIPPINE ISLANDS.

The deed executed by the officer, of lands sold on execution, shall be substantially in the following form, varied to suit the circumstances, if the party entitled to the deed be an assignee of the purchaser, or a redemptioner, or his assignee:

1013. Official Deed on Execution Sales, Statutory Form.

“KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS an execution against of , in the province of , in the action of of , in the province of , was by me, governor [or, his deputy, as the case may be], of the province of , on the day of , A. D. 19 , levied on [here describe the premises], and WHEREAS, on the day of , A. D. 19 , all the estate, right, title, interest and property of the said , defendant, in the premises aforesaid were by me, the said [here insert the name of the officer], sold at public auction, for the satisfaction of said execution, to , of , of the province of , who was the highest bidder, for the sum of dollars, which the said has since fully paid to me.

Now, by force and virtue of law in such cases made and provided, I, the said [the officer], in consideration of the sum of money paid unto me as aforesaid, do, by these presents, sell and assign and set over unto the

said [purchaser], his heirs and assigns forever, all the estate, right, title, interest, property and inheritance of the said [defendant] in and to the said premises and appurtenances, at the time of the levy thereon [or, of the attachment, as the case may be].

TO HAVE AND TO HOLD the said premises and appurtenances, to the said [purchaser], his heirs and assigns forever.

IN WITNESS WHEREOF, I hereunto set my hand and seal, on this day of , 19 ."

[Signature and seal.]

Act No. 190, of 1901, in effect September 1, 1901, § 473; Acts of 1900-1901, pp. 511, 512.

The original record of a conveyance or instrument conveying or affecting real property situated in the Philippine Islands, or a certified copy of the record thereof, may be read in evidence with the like effect as the original instrument, without further proof. *Ibid.*, § 331, p. 481.

There shall be levied, collected, and paid for and in respect to the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in this section, or for or in respect to the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons who shall make, sign, or issue the same, the several taxes following:

Eleventh. On each power of attorney to sell and convey real estate, or to rent and lease the same, twenty centavos.

Fourteenth. On all conveyances, deeds, instruments, or writings whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser or purchasers, or to any other person or persons designated by such purchaser or purchasers, when the true consideration or value received for such realty is more than two hundred pesos, but not more than one thousand pesos, fifty centavos; and for each additional one thousand pesos or fractional part thereof, of such consideration, fifty centavos; but in sales of encumbered property the tax shall be collected on the net amount of the consideration after deducting the amount of the encumbrance; and original certificates under the Land Registration Act and patents to land granted under the Public Land Act shall be exempted from the payment of this tax.

The tax imposed in this paragraph shall be paid and assessed on the complete and full amount of money or other valuable consideration actually paid or delivered in exchange for such lands, tenements, or other realty; and the Collector of Internal Revenue, provincial treasurers, and other revenue officers, when there is good reason to believe that a fraud has been perpetrated on the revenues through the declaration of a fictitious consideration in any such conveyance, deed, instrument, or writing, shall from the real-estate assessment rolls, or from any other reliable source, assess the lands, tenements, or other realty at their true market value and the tax on such conveyance, deed, or instrument shall be assessed and collected on such true market value of the realty conveyed; and any person who, with the intent to defraud the revenues, places a fictitious valuation on any realty conveyed and subject to the tax imposed in this paragraph, or any valuation which shall be less than the actual amount of money or other valuable thing received or delivered in payment for such realty, shall, in addition to the payment of the tax assessed on the actual consideration received or true market value of the realty conveyed, forfeit and pay a sum equal to twice the amount of such tax.

Act No. 1189, of 1904, in effect August 1, 1904, § 116; Acts of 1903-1904, pp. 351, 354, 355.

PORTO RICO.

The titles of ownership or of other real rights relating to immovables which are not properly inscribed or annotated in the registry of property, shall not be prejudicial to third persons. Civil Code of 1902, § 613.

In order to determine the titles subject to annotation or inscription, the form, effect and extinction of the same, the manner of keeping the registry, and the value of the entries contained in the books thereof, the provisions of the Mortgage Law shall be observed. *Ibid.*, § 615.

Public instruments are those authenticated by a notary or by a competent public official, with the formalities required by law. *Ibid.*, § 1184.

Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

They shall also be evidence against the contracting parties and their legal representatives with regard to the declarations the former may have made therein. *Ibid.*, § 1186.

Public instruments, made for the purpose of impairing a former instrument, between the same parties, shall be effective against third parties only when the contents of the former are entered in the proper public registry or in the margin of the original instrument, and in that of the transcript or copy, by virtue of which the third person may have acted. *Ibid.*, § 1187.

Copies of public instruments of which there is an original or protocol, contested by those they prejudice, shall have force of proof only when they have been duly collated.

Should there be any difference between the original and the copy the contents of the former shall govern. *Ibid.*, § 1188.

A private instrument legally acknowledged shall have, with regard to those who signed it and their legal representatives, the same force as a public instrument. *Ibid.*, § 1193.

A person against whom a written obligation, which appears signed by him, is set up in court is obliged to declare whether the signature is his or not.

A refusal, without sufficient cause, to make the statement mentioned may be construed by the courts as an admission of the authenticity of the instrument. *Ibid.*, § 1194.

The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office. *Ibid.*, § 1195.

Entries, registries, and private papers shall be evidence against the person who has written them only in all that may appear clearly stated; but a person who wishes to make use thereof is bound to accept them also in the part prejudicial to him. *Ibid.*, § 1196.

Private instruments executed for the purpose of changing the agreements made in a public instrument shall produce no effect against a third person. *Ibid.*, § 1198.

A vendor is bound to deliver and warrant the thing which is the object of the sale. *Ibid.*, § 1364.

When the sale is made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred. *Ibid.*, § 1365.

The obligation to deliver the thing sold includes that of placing in the possession of the vendee all that is mentioned in the contract, according to the following rules:

If the sale of real property is made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that may have been mentioned in the contract; but should this not be possible, the

vendee may choose between a proportional reduction in the price or the rescission of the contract, provided that in the latter case the decrease in the real estate is not less than one-tenth of the area given it.

The same shall be done, even when the area appears to be the same, if any part of the real estate is not of the character mentioned in the contract.

The rescission in such case shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon. *Ibid.*, § 1372.

If in the case of the preceding section there is greater area or number in real estate than those mentioned in the contract, the vendee shall be obliged to pay the price of the excess if the greater area or number should not exceed one-twentieth of those mentioned in the contract; but should it surpass said one-twentieth, the vendee may choose between paying the greater value of the estate or withdrawing from the contract. *Ibid.*, § 1373.

In the sale of real estate made for a fixed price and not at the rate of a specified sum for a unit of measure or number, the increase or decrease of the same shall not be considered, even when greater or less area or amount than that stated in the contract may be found.

The same shall take place when two or more estates are sold for a single price; but, if besides mentioning the boundaries, which are indispensable in every conveyance of real estate, their area and number should be designated in the contract, the vendor shall be obliged to deliver all that is included within said boundaries, even when they exceed the area or number specified in the contract; and, should he not be able to do it, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract be annulled by reason of the vendee not accepting the failure to deliver what had been stipulated. *Ibid.*, § 1374.

The actions arising from the three preceding sections shall prescribe after six months, counted from the day of the delivery. *Ibid.*, § 1375.

If real property is sold to different vendees, it shall belong to the person acquiring it who first recorded it in the registry.

Should there be no entry, the property shall belong to the person who first took possession of it in good faith, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. *Ibid.*, § 1376.

By virtue of the warranty referred to in section 1364, the vendor shall warrant to the vendee:

1. The legal and peaceful possession of the thing sold.
2. That there are no hidden faults or defects therein. *Ibid.*, § 1377.

A contract exists from the moment one or more persons consent to bind himself or themselves, with regard to another or others, to give something or to render some service. *Ibid.*, § 1221.

Contracts are perfected by mere consent, and from that time they are binding. *Ibid.*, § 1225.

No one can contract in the name of another without being authorized by him or without having his legal representation according to law.

A contract executed in the name of another by one who has neither his authorization nor legal representation shall be void, unless it should be ratified by the person in whose name it was executed before being revoked by the other contracting party. *Ibid.*, § 1226.

Contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist. *Ibid.*, § 1245.

Should the law require the execution of an instrument or other special formality in order to make the obligations of a contract binding, the contracting parties may compel each other to comply with said formalities from the moment in which consent and the other requirements, necessary for their validity, have taken place. *Ibid.*, § 1246.

The following must appear in a public instrument:

1. Acts and contracts the object of which is the creation, modification, or extinction of property rights on real property.

2. Leases of the same property for six or more years, provided they are to the prejudice of third persons. *Ibid.*, § 1247.

Eviction shall take place when by a final judgment, and by virtue of a right prior to the sale, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall be liable for the eviction even though no stipulation has been included in the contract on the subject.

The contracting parties may, however, increase, decrease, or suppress this legal obligation of the vendor. *Ibid.*, § 1378.

Any stipulation exempting the vendor from obligation of answering for the eviction shall be void, provided there is bad faith on his part. *Ibid.*, § 1379.

If a vendee has renounced the right of warranty in the case of eviction and it occurs, the vendor must deliver only the price which the thing had at the time of the eviction, unless the vendee has made the renunciation knowing the risk of eviction and submitting to its consequences. *Ibid.*, § 1380.

If a warranty has been stipulated, or if nothing has been agreed upon on this point, if the eviction has taken place, the vendee shall have the right to demand of the vendor —

1. The restitution of the price which the thing sold had at the time of the eviction, whether it be greater or less than that of the sale.

2. The fruits or proceeds, should he have been adjudged to deliver them to the person who won the suit instituted against him.

3. The costs of the suit which caused the eviction, and, in a proper case, those of the suit instituted against the vendor for the warranty.

4. The expenses of the contract, if the vendee has paid them.

5. The damages and interest and the voluntary expenses or of mere recreation or ornamentation, should the sale have been made in bad faith. *Ibid.*, § 1381.

Should the vendee lose, on account of the eviction, a part of the thing sold of such importance, in relation to the whole, that he would not have purchased it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other charges than those it had when he acquired it.

The same provision shall be observed when two or more things are jointly sold for a lump sum, or a special price for each one of them, should it clearly appear that the vendee would not have purchased one without the other. *Ibid.*, § 1382.

A warranty cannot be demanded until a final judgment is rendered by which the vendee is adjudged to lose the thing acquired or a part thereof. *Ibid.*, § 1383.

The vendor shall be obligated to the proper warranty whenever it is proved that he was given notice of the suit for eviction at the instance of the vendee. In the absence of this notice the vendor shall not be bound to the warranty. *Ibid.*, § 1384.

If the estate sold is encumbered by any nonapparent burden or easement, not mentioned in the instrument, of such a nature that it must be presumed that the vendee would not have acquired it had he been aware thereof, he may request the rescission of the contract, unless he should prefer the proper indemnity.

During a year, to be counted from the date of the execution of the instrument, the vendee may either institute the rescissory action or request the indemnity.

After the lapse of one year, he can only demand such indemnity within an equal period, to be counted from the date on which the incumbrance or easement was discovered by him. *Ibid.*, § 1386.

In the sale of real property, even though it may have been stipulated that in the absence of the payment of the price within the time agreed upon, the rescission of the contract shall take place by full right, the vendee may pay, even after the expiration of the period, as long as he has not been summoned either judicially or by a notarial act. After the suit has been instituted the judge can not grant him a further period. *Ibid.*, § 1407.

Conventional redemption shall take place when the vendor reserves to himself the right to recover the thing sold, with the obligation to comply with section 1421, and whatever more may have been agreed upon. *Ibid.*, § 1410.

The right referred to in the preceding section, in the absence of an express agreement, shall last four years counted from the date of the contract.

Should there be an agreement, the period shall not exceed ten years. *Ibid.*, § 1411.

If the vendor should not comply with the provisions of section 1421 the vendee shall irrevocably acquire the ownership of the thing sold. *Ibid.*, § 1412.

The vendor can not exercise the right of redemption without returning to the vendee the price of the sale, and furthermore:

1. The expenses of the contract and any other legitimate payment made by reason of the sale.

2. The useful and necessary expenses incurred by the thing sold. *Ibid.*, § 1421.

When any registrar of property refuses absolutely or provisionally to record or to give its full legal effect to any document which may be presented to him for recording or for the annotation of the contents thereof, whether it be a deed, a decree, a mortgage, a satisfaction of a mortgage or any other document which he is required by law either to record or to enter, he shall set out clearly and concisely at the foot of the document his reasons for the refusal and shall serve notice of his action upon the interested party accompanied by a copy of his written reasons for the refusal. Revised Statutes of 1902, § 799.

In case the party interested in the record or the entry of the document shall not withdraw it within two days after having been notified as aforesaid, the registrar shall forthwith forward it to the Supreme Court in order that it may affirm or reverse his action. The decision of the Supreme Court shall be rendered within ten days after the receipt of the document, and on the day following its rendition the document, accompanied by a copy of the decision, shall be returned to the registrar in order that he may comply with the decision of the Court. While the matter is pending in the Supreme Court, the interested party may, either in person or by attorney, submit a written argument to the Court, in support of his right to have the document recorded or entered. *Ibid.*, § 800.

The party interested may withdraw the document within two days after the refusal of the registrar to record or enter it, and within twenty days thereafter may present it to the Supreme Court and the Court shall thereupon affirm or reverse the action of the registrar as in section 800. *Ibid.*, § 801.

Whenever any registrar shall refuse to record or to enter any document or give it due legal effect, he shall make an entry of the presentment and refusal in the proper volume and page number belonging to the property in question. Such entry, however, shall have effect only during four months from date thereof. *Ibid.*, § 805.

The registrars of property shall be under the administrative jurisdiction of the Attorney General. *Ibid.*, § 803.

Issues of law or of fact as to the effect upon the title to real estate or rights therein as affected by priority or preference between or among documents of title or property in the recording or the entry of the same shall be decided by declaratory actions in the tribunals of justice. *Ibid.*, § 807.

General Order Number 99 of April 30, 1900, and all the articles of the Mortgage Law and the regulations for the execution thereof or parts of the same in conflict with this Act are repealed. *Ibid.*, § 808.

Every deed of transfer of real property, or interest therein, and every mortgage or other security for debt secured by real property, made on and after the first day of April, 1901, by any registrar of property, shall be separately and specially recorded by the proper registrar of property, without compensation, in a special transfer book to be furnished by the Treasurer, which shall contain the date and consideration of the transfer or grant; the name and residence of the grantee; the name and residence of the grantor; the name and residence of the person to whom said real property, interest in or debt secured by real property is assessed and taxed, and reference to the archives or records of such registrars in which the said property is more fully described. Political Code of 1902, § 325.

RHODE ISLAND.

A conveyance made by a tenant for life or years purporting to grant a greater estate than he possesses or can lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant can lawfully convey. General Laws-Revision of 1909, p. 870, § 7 of chap. 252.

A person actually seized of lands as tenant-in-tail may convey such lands in fee-simple by a deed in common form, in like manner as if he were seized thereof in fee-simple: provided, that in such deed the intention be expressed of barring the entail and reference be made to the specific land by metes and bounds, or by other definite description. Such conveyance shall bar the estate-tail and all remainders and reversions expectant thereon. An estate-tail may also be barred as provided in section five of this chapter. *Ibid.*, p. 871, § 14.

All lands held in fee-tail shall be liable for the debts of the tenant-in-tail in his lifetime like estates in fee-simple; and when sold on execution, or when sold by guardians, the creditor or purchaser shall hold such lands in fee-simple; but this shall not extend to lands in which the debtor has only an estate-tail in remainder. *Ibid.*, p. 870, § 5.

When lands are held by one person for life with a vested remainder in tail in another, the tenant-for-life and the remainder-man may convey such lands in fee-simple by their deed or deeds in common form, subject to the proviso in section 14; and such deed or deeds shall bar the estate-tail and all remainders and reversions expectant thereon. *Ibid.*, pp. 871, 872, § 15.

Equitable estates-tail in possession or remainder, and all remainders and reversions expectant thereon, may be barred in the same manner as legal estates-tail and the remainders and reversions expectant thereon. *Ibid.*, p. 872, § 16.

The person to whom an equitable fee-simple is conveyed pursuant to the preceding section shall upon request therefor be entitled to a conveyance of the outstanding legal estate from the person in whom such legal estate is then or thereafter vested in trust, unless provision to the contrary be made in the instrument creating the trust. *Ibid.*, p. 872, § 17.

When real estate is subject to a contingent remainder, executory devise, or power of appointment, the superior court may, upon the petition of any person who has an estate-in-possession in such real estate, and after notice and other proceedings as hereinafter required, appoint one or more trustees and authorize him or them to sell and convey such estate or any part thereof in fee-simple, if such sale and conveyance appears to said court to be necessary or expedient, for such an amount, and on such terms, as said court may deem proper, and such conveyance shall be valid and binding upon all parties. *Ibid.*, p. 872, § 18.

Notice of such petition shall be given in such manner as the court may order to all persons who are or may become interested in the real estate to which the petition relates, and to all persons whose issue not in being may become interested therein; and the court shall in every case appoint a suitable person to appear and act therein as the next friend of all minors, persons not ascertained, and persons not in being, who are or may become interested in such real estate; and the cost of the appearance and the service of such next friend, including the compensation of his counsel, to be determined by the court, shall be paid, as the court may order, either out of the proceeds of the sale or by the petitioner, in which latter case execution therefor may issue in the name of the next friend. *Ibid.*, p. 872, § 19.

Every trustee appointed under section eighteen of this chapter, shall give bond in such form and for such an amount as the court appointing him may order, and he shall receive and hold, invest and reinvest, or apply, the proceeds of any sale made by him, for the benefit of the persons who would have been entitled to the real estate if such sale had not been made. *Ibid.*, p. 872, § 20.

Under an indenture an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named a party to the same indenture; also any conveyance purporting to be an indenture shall have the effect of an indenture although not actually indented. *Ibid.*, p. 873, § 22.

Every conveyance of lands, tenements or hereditaments absolutely, by way of mortgage, or on condition, use or trust, for any term longer than one year, shall be void unless made in writing duly signed, delivered, and recorded in the records of land-evidence in the town or city where the said lands, tenements or hereditaments are situated; but the same, if delivered, as between the parties and their heirs, and as against those taking by gift or devise, or those having notice thereof, shall be valid and binding though not recorded. A lease for the term of one year or less shall be valid although made by parole. *Ibid.*, p. 875, § 2 of chap. 253.

Whenever any instrument entitled to record shall be presented for record the town clerk or recorder of deeds, as the case may be, immediately thereupon shall cause to be entered in writing on said instrument the day, the hour and the minute when the same was presented for record, and shall forthwith enter the same in the order of presentment in a receiving-book to be kept for that purpose. *Ibid.*, p. 875, § 3.

Any of the following instruments shall be recorded or filed by the town clerk or recorder of deeds, in the manner prescribed by law, on request of any person and on payment of the lawful fees therefor; that is to say,

1. Letters of attorney.
2. All contracts for sale of land.
3. Bonds for title or covenants or powers concerning lands, tenements and hereditaments.

7. All instruments required by statute to be recorded, including deeds, mortgages and transfers and discharges thereof, leases and transfers and cancellations thereof, and the covenants, conditions, agreements and powers therein contained.

8. Instruments of defeasance. *Ibid.*, pp. 875, 876, § 6.

Such record or filing shall be constructive notice to all persons of the contents of such instruments and other the matters so recorded, so far as same are genuine. *Ibid.*, p. 876, § 7.

Any form of conveyance in writing, duly signed and delivered by grantor, or the attorney of the grantor duly authorized, shall be operative to convey to the grantee all the possession, estate, title and interest, claim, demand or right of entry or action, of the grantor, absolutely in and to the land conveyed, unless otherwise expressly limited in estate, condition, use or trust, and, if otherwise expressly limited, shall convey such property for the time

or estate or on the condition, use or trust as declared, without any other act or ceremony. *Ibid.*, p. 877, § 11.

Any instrument purporting to be a release of all claims and demands, or of any special demand, whatever be the consideration expressed therefor, and any discharge of mortgage in whole or in part, shall be construed to have that effect. *Ibid.*, p. 877, § 12.

The words, "give," "grant," or "exchange," in any conveyance, shall imply no covenant, warranty or right of re-entry. *Ibid.*, p. 877, § 13.

Whoever conveys real estate by deed containing a covenant that it is free from all incumbrances when an incumbrance appears of record to exist thereon, whether known or unknown to him, shall be liable in an action of the case to the grantee, his heirs, executors, administrators, successors or assigns, for all damages and expenses sustained by reason of or in removing the same. *Ibid.*, p. 877, § 14.

Whenever any administrator, executor, guardian, receiver, sheriff, mortgagee, or any person acting under a power of sale in any mortgage-deed, deed of trust, or other conveyance, shall sell or cause to be sold any real estate lying within this state, the title to which will in any manner depend upon notice of sale to be published in any newspaper, if the person or persons causing such sale to be made shall cause a copy of the advertisement, in pursuance of which such sale is made, to be attached to the deed given thereunder, together with his, her or their affidavit, or, if a corporation, the affidavit of its officer duly authorized thereto, stating when, how many times and in what newspaper or newspapers such advertisement was published, and the manner, time and place of making such sale, such copy and affidavit shall be recorded with the deed to which they are attached, and the record thereof shall be prima facie evidence of the truth of the matters and things therein stated, but the omission of such copy and affidavit shall not affect the validity of said conveyance if otherwise valid. *Ibid.*, pp. 877, 878, § 15.

Any conveyance executed by attorney shall be as valid as if executed by the grantor himself, providing* that a power of attorney be given by such grantor for this purpose; which power and the deed executed by the attorney thereunder shall be signed, delivered and recorded with like formalities prescribed by law concerning deeds from grantors in person. *Ibid.*, p. 878, § 16.

The donee of a power of attorney may, under and within the authority of the power, if he think fit, execute or do any assurance, instrument, or thing in and with his own name and signature; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature of the donor thereof. *Ibid.*, p. 878, § 17.

The use of the word "grant" is not necessary in order to convey tenements and hereditaments, corporeal or incorporeal. *Ibid.* p., 878, § 19.

In deeds lands, tenements, and hereditaments may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person. *Ibid.*, p. 878, § 20.

In a deed it is sufficient, in the limitation of an estate in fee-simple, to use the word "heirs," or to use the words "in fee-simple" without the word "heirs," and in the limitation of an estate in tail, to use the words "heirs of the body," or the words "in tail" without the words "heirs of the body;" and in the limitation of an estate in tail-male or in tail-female, to use the words "heirs male of the body," or "heirs female of the body," or the words "in tail-male," or "in tail-female," as the case requires, without the words "heirs male of the body," or "heirs female of the body." *Ibid.*, p. 879, § 21.

A person to whom any power, whether coupled with an interest or not, is given, may release, or contract not to exercise, the power, unless prevented from so doing by the terms of said power. *Ibid.*, p. 879, § 22.

* So in original.

A covenant relating to land of inheritance shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed; a covenant relating to land not of inheritance shall be deemed to be made with the covenantee, his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed. This applies only where no express provision is made to the contrary. *Ibid.*, p. 879, § 23.

Parties having adversary interests in any question of the construction of any statute of this state, or of any will, deed, or other writing, or in any question of title or evidence of title to any real or personal estate contracted to be sold, or which is to be otherwise dealt with, or as to the parties to or the form of any deed or other instrument for carrying such contract into effect, or as to any matter or thing within the jurisdiction of a court of equity, may concur in stating such question in the form of a special case for the opinion of the supreme court; and executors, administrators, trustees, infants by their guardian or next friend, and married women, may concur in such statement; and the court may order any person having an interest therein to be summoned in and to be made party thereto; and the court, on hearing the case, may declare its opinion of the rights involved therein without administering any relief, and such declaration shall have the same effect as to all the parties before the court as if contained in a decree on original bill: but the court may decline to answer such questions as in its opinion it cannot properly decide. *Ibid.*, pp. 1017, 1018, § 20 of chap. 289.

The following shall be substantially the form of the deed to be given whenever real estate is levied upon and sold under execution, that is to say:

1014. Deed Made Upon Sale Under Execution, Statutory Form.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME:

send Greeting:

WHEREAS an execution against _____, at the suit of _____, was by me, the said _____, on the _____ day of _____, levied on [*here describe the premises*]; and WHEREAS on the _____ day of _____, all the estate, right, title, interest, and property of the said _____ in the premises aforesaid, were by me, the said _____, sold at public auction, for the satisfaction of the said execution, to _____, who was the highest bidder, for the sum of _____, which the said _____ hath since well and truly paid to me, the said _____: Now KNOW YE, that by force and virtue of the law in such case made and provided, I, the said _____, in consideration of the sum of money paid unto me as aforesaid, do by these presents bargain, sell, assign, and set over unto the said _____, heirs and assigns forever, all the estate, right, title, interest, property, freehold, and inheritance of the said _____ of, in and to the said premises and appurtenances at the time of the levy thereon. To HAVE AND TO HOLD the said premises and appurtenances to the said _____, heirs and assigns forever.

IN WITNESS, ETC.

And there shall be annexed to such deed, and forming a part thereof, a copy of such execution and the officer's return thereon, duly certified by such officer. *Ibid.*, p. 1090, § 16 of chap. 304.

Whenever attachment shall have been made by original writ or writ of mesne process, the officer shall insert the time thereof and vary the deed accordingly. *Ibid.*, p. 1090, § 17.

1015. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that , hereinafter called the grantor , in consideration of dollars, to paid by , hereinafter called the grantee , the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said grantee and heirs and assigns forever. [*description*]

To HAVE AND TO HOLD, the aforegranted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said grantee , and heirs and assigns forever.

And , the said grantor , do hereby, for and for heirs, executors and administrators, covenant with the said grantee and heirs and assigns that lawfully seized in fee simple of the said granted premises; that the same are free from all encumbrances; that have good right, full power and lawful authority to sell and convey the same in manner as aforesaid; that the said grantee and heirs and assigns shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises, and that , the said grantor , will, and heirs, executors and administrators shall, warrant and defend the same to the said grantee and heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid, do hereby release all right of in and to the said granted premises unto the said grantee and heirs and assigns forever.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , in the year of our Lord one thousand nine hundred and .

[*Signatures and seals.*]

Signed and sealed in presence of

[*Signatures.*]

1016. Quitclaim Deed.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of dollars, to paid by , the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto , the said , heirs and assigns forever, all the right, title, interest, property, claim and demand, which now have, or of right ought to have, or claim, in and to [*description*].

To HAVE AND TO HOLD the same, with all the rights, privileges and appurtenances thereunto appertaining, unto and to the use of , the said , heirs and assigns forever.

And , the aforementioned , for and for heirs, executors and administrators, do covenant with the said , heirs and assigns, that will warrant and defend the aforescribed premises unto the said , heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through or under .

And . wife of the said , in consideration of the sum paid as aforesaid, do hereby release and forever quitclaim unto the said ,

neirs and assigns, all right of dower in and to the aforescribed premises.

IN TESTIMONY WHEREOF, have hereunto set hand and seal, this day of , in the year of our Lord one thousand nine hundred and .

[Signatures and seals.]

Signed and sealed in presence of

[Signature.]

SOUTH CAROLINA.

The following form or purport of a release shall, to all intents and purposes, be valid and effectual to carry from one person to another or others the fee simple of any land or real estate, if the same shall be executed in the presence of and be subscribed by two or more credible witnesses:

1017. Deed, Statutory Form.

"The State of South Carolina:

"KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of , in the State aforesaid, have granted, bargained, sold and released, and by these presents do grant, bargain, sell, and release unto the said C. D., all that [*here describe the premises*], together with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned, unto the said C. D., his heirs and assigns forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

"WITNESS my hand and seal, this day of , in the year of our Lord , and in the year of the independence of the United States of America.

"

[L. S.]"

This section shall be so construed as not to oblige any person to insert the clause of warranty, or to restrain him from inserting any other clause or clauses, in conveyances, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms heretofore in use within this state. Code of Laws of 1902, § 2367.

Every conveyance, grant, charge, lease, estate, incumbrance, and limitation of use or uses of, in, or out of any lands, tenements, or other hereditaments whatsoever, which may be had or made for the intent and of purpose to defraud and deceive such person or persons, bodies politic or corporate, as shall purchase in fee simple, fee tail, for life, lives, or years, the same lands, tenements, and hereditaments, or any part and parcel thereof, or to defraud and deceive such as have or shall purchase any rent, profit, or commodity in or out of the same, or any part thereof, shall be deemed and taken (only as against such person and persons, bodies politic and corporate, his and their heirs, successors, executors, administrators, and assigns, and against all and every other person and persons lawfully having or claiming by, from, or under them, or any of them, which have purchased, or shall hereafter so purchase, for money or other good consideration, the same lands, tenements, or hereditaments, or any part or parcel thereof, or any rent, profit, or com-

modity, in or out of the same,) to be utterly void, frustrate, and of no effect; and* pretence, color, feigned consideration, or expressing of any use to the contrary notwithstanding. *Ibid.*, § 2370.

All and every the parties to such feigned, covinous, and fraudulent gifts, grants, leases, charges, or conveyances, or being privy and knowing of the same, or any of them, who shall wittingly or willingly put in use, avow, maintain, justify, or defend the same, or any of them, as true, simple, and done, had, or made bona fide, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators, or assigns, or such as have or shall lawfully claim anything by, from, or under them, or any of them, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments so purchased or charged; the one moiety whereof for the use of the State, and the other moiety to the party or parties grieved by such feigned and fraudulent gift, grant, lease, conveyance, incumbrance, or limitation of use, to be recovered by action in any court of competent jurisdiction; and also being thereof convicted, shall be imprisoned one-half year. *Ibid.*, § 2371.

Nothing in the two preceding sections shall extend to or be construed to impeach, defeat, make void, or frustrate, any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest, or limitation of use or uses of, in, to, or out of any lands, tenements, or hereditaments had or made, upon or for good consideration and bona fide, to any person or persons, bodies politic or corporate; anything therein mentioned to the contrary notwithstanding. *Ibid.*, § 2372.

If any person or persons have made, or shall make, any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in, or out of any lands, tenements, or hereditaments, with any clause, provision, article, or condition or* revocation, determination or alteration, at his or their will or pleasure, of such conveyance, assurance, grants, limitations of uses or estates of, in, or out of the said lands, tenements, or hereditaments, or of, in, or out of any part or parcel of them, contained or mentioned in any writing, deed, or indenture of such assurance, conveyance, grant or gift; and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey, or charge, the same lands, tenements, or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money or other good consideration paid or given, (the said first conveyance, assurance, gift, grant, demise, charge, or limitation, not by him or them revoked, made void, or altered, according to the power and authority reserved or expressed unto him or them in or by the said secret conveyance, assurance, gift, or grant,) then the said former conveyance, assurance, gift, demise, and grant, as touching the said lands, tenements, and hereditaments, so after bargained, sold, conveyed, demised, or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators, and assigns, and against all and every person and persons which have, shall, or may lawfully claim anything by, from, or under them, or any of them, shall be deemed, taken, and adjudged to be void, frustrate, and of none effect. *Ibid.*, § 2373.

Each County Auditor shall keep a record of all sales or conveyances of real property made in his County, in which he shall enter, in columns, the names of the purchaser and seller, the quality of land conveyed, the location and price of the same, and therefrom correct the County duplicates annually; and, for the purpose of carrying out this provision, the clerks of Courts and Registers of Mesne Conveyances of each County are hereby required to have the endorsement of the County Auditor on each and every deed of conveyance for real property that the same is on record in his office, before the same can be placed on record in the office of said Clerks of Courts or Registers of Mesne Conveyances. *Ibid.*, § 366.

* So in original.

Before any deed of conveyance of real property can be placed on record in the office of the Register of Mesne Conveyances or Clerk of Court it must have thereon the endorsement of the County Auditor that it has been entered of record in his office. *Ibid.*, § 949.

Any person, under the age of twenty-one years, having estates in lands, tenements, or hereditaments, only in trust for others, or by way of mortgage, by the direction of the Court of Common Pleas, signified by an order made upon hearing all parties concerned, on the petition of the person for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor, or guardian of such infant, or persons entitled to the moneys secured by or upon any lands, tenements, or hereditaments, whereof any infant is or shall be seized or possessed by way of mortgage, or of the person entitled to the redemption thereof, may convey and assure any such lands, tenements, or hereditaments, in such manner as the said Court shall, by such order so to be obtained, direct, to any other person. *Ibid.*, § 2609.

Such conveyance or assurance, to be had and made as aforesaid, shall be as effectual in law as if the said infant was, at the time of making the same, of the full age of twenty-one years. *Ibid.*, § 2610.

All deeds of conveyances of lands, tenements or hereditaments, either in fee simple or for life; all deeds of trust or instruments in writing, conveying real estate and creating a trust or trusts in regard to such property, or charging or encumbering the same; all mortgages or instruments in writing in the nature of a mortgage of any real property; all leases or contracts in writing made between landlord and tenant for a longer period than twelve months; and, generally, all instruments in writing now required by law to be recorded in the office of Register of Mesne Conveyances or Clerk of Court in those counties where the office of Register of Mesne Conveyances has been abolished, or in the office of the Secretary of State, delivered or executed, shall be valid, so as to affect from the time of such delivery or execution the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice, only when recorded within forty days from the time of such delivery or execution in the office of the Register of Mesne Conveyances or Clerk of Court of the county where the property affected thereby is situated, in the case of real estate; but the recording and record of the above mentioned deeds or instruments of writing subsequent to the expiration of said forty days shall from the date of such record operate as notice to all who may subsequently thereto become creditors or purchasers. *Ibid.*, § 2456.

No possession of real property described in any instrument of writing required by law to be recorded shall operate as notice of such instrument; and actual notice shall be deemed and held sufficient to supply the place of registration only when such notice is of the instrument itself or of its nature and purport. *Ibid.*, § 2457.

It shall be lawful, in every court of this State, for any party, plaintiff or defendant, to produce in evidence a copy, certified by the Secretary of State, of any grant and plat of land issued under the authority of this State, or certified copies of grants, under the authority of the State of North Carolina: in case the person or persons so applying to produce an office copy of a grant in evidence swear that the original grant is lost, destroyed or out of his, her, or their power to produce, and that he, she, or they have not destroyed, mislaid, or in any way willingly, previous to that time, put it out of his, her, or their power to produce the same, with an intention to produce an office copy of the same as evidence. Nothing herein contained shall deprive any party in possession of the original grant of any advantage he would have had or derived from possessing the same, in case this section had never been passed. *Ibid.*, § 2895.

A copy of any deed of conveyance of real estate certified by the Register of Mesne Conveyances or Clerk of Court of the county where the same may be recorded, may be produced in evidence in every court of this State for any party, plaintiff or defendant, in like manner and subject to the same rules

as are provided by the foregoing section in relation to grants and plats; but the party intending to offer in evidence such office copy shall give at least ten days' notice thereof to the opposite party or his attorney. *Ibid.*, § 2896.

The production (without further or other proof) of the original of any instrument in writing (other than wills), required by law to be recorded, shall be prima facie evidence of the execution of such instrument: in case such instrument shall have been recorded in the manner and place, and within the time, prescribed by law for recording same; and in case, also, any party or his attorney so producing any such recorded instrument, shall have given at least twenty days' previous notice in writing to the opposite party, or his attorney, of the intention so to produce any such recorded instrument, with a description of the same. *Ibid.*, § 2897.

In all cases of sale of land for taxes the sheriff's deed of conveyance, whether executed to a private person, a corporation or the Sinking Fund Commission, shall be held and taken as prima facie evidence of a good title in the holder, and that all proceedings have been regular, and all requirements of the law have been duly complied with. *Ibid.*, §§ 111, 426.

All deeds of conveyances of railroad beds, tracks and right of way, all leases and mortgages or other conditional sales of, and all other instruments in writing relating to such property in this State delivered or executed, shall be valid, so as to affect from the time of such delivery or execution the rights of subsequent creditors or purchasers for valuable consideration without notice, only when recorded within forty days from the execution and delivery thereof in the office of the Secretary of State; but the above mentioned deeds, leases, mortgages and other conditional sales and instruments in writing, if recorded subsequent to the expiration of said period of forty days, shall be valid to affect the rights of subsequent creditors and purchasers for valuable consideration without notice only from the date of such record. *Ibid.*, § 634.

Said conveyances, leases and mortgages and other instruments in writing shall be recorded by the Secretary of State in books to be kept by law for that purpose in his office.

A certificate or certified copy by the Secretary of State is competent evidence of such record and of the facts contained in each deed, lease and mortgage or other instrument in writing so recorded and certified in all the courts of this State. *Ibid.*, § 636.

The Register of Mesne Conveyances is required to record, in the order of the times at which they may be brought to his office, all conveyances and mortgages and other writings concerning the titles to lands situate in his county, which may be lodged with him to be recorded. Every such writing shall be recorded within one month after its lodgment, and the recording shall bear even date with the lodgment; on every such writing shall be endorsed a certificate, to be signed by the Register or his deputy, specifying the time when, and book and page where, it was recorded; in the book, the names of the parties and nature of the writing shall precede the registry, and after it shall follow the date of the registry and a memorandum of the person to whom the original writing has been delivered. *Ibid.*, § 950.

1018. Warranty Deed, Usual Form.

THE STATE OF SOUTH CAROLINA. KNOW ALL MEN BY THESE PRESENTS, that
 , in the state aforesaid, , in consideration of the sum of
 to in hand paid at and before the sealing of these presents, by
 in the state aforesaid (the receipt whereof is hereby acknowledged),
 have granted, bargained, sold and released, and by these presents, do grant,
 bargain, sell and release unto the said [description], together with all and
 singular the rights, members, hereditaments and appurtenances, to the said
 premises belonging, or in anywise incident or appertaining. TO HAVE AND TO
 HOLD, all and singular the premises before mentioned, unto the said ,

heirs and assigns forever. And do hereby bind , heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said , heirs and assigns, against and heirs, and all and every other person or persons, lawfully claiming or to claim the same, or any part thereof. And the said for sel and heirs, executors and administrators do covenant, promise, grant and agree, to and with the said , heirs and assigns, by these presents, in manner and form following, that is to say, that , the said , now at the time of the sealing and delivery of these presents, lawfully and absolutely seized of and in the said , and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, of a good, sure, perfect and absolute state of inheritance, in fee simple, without any manner of condition, trust, proviso, power of revocation, or limitation, or any uses, or other restraint, matter or thing whatsoever, to alter, change, charge, defeat or evict the same. And also, that , the said , now ha in sel good right, full power and lawful and absolute authority, to grant, release, and confirm the said , and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, unto the said , heirs and assigns forever, as aforesaid. And also, that it shall and may be lawful to and for the said , heirs and assigns, from time to time, and at all times, forever hereafter, peaceably and quietly to enter into, have, hold, occupy, possess and enjoy the said , and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof, with their and every of their appurtenances, without any of the lawful let, suit, trouble, molestation, eviction or interruption of , the said , executors or administrators, or any other person or persons whatsoever; and that free and clear, and freely and clearly and absolutely acquitted, exonerated and discharged of, and from any and all manner of former and other gifts, grants, bargains, sales, uses, wills, initials, jointures, dowers, judgments, executions, charges and incumbrances whatsoever, had, made, done, committed, or suffered by the said , or any other person or persons whatsoever.

AND LASTLY, that , the said , and heirs, and all and every person or persons lawfully claiming, or to claim, any estate, right, title, trust or interest of, in or to the said , and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, or any part or parcel thereof shall and will from and at all times hereafter, at the reasonable request, and proper costs and charges of the law, of the said , heirs and assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged and executed, all and every such further and other lawful and reasonable act and acts, thing and things, conveyances and assurances in the law whatsoever, for the further, better and more perfect and absolute granting, conveying and assuring the said , and all and singular other the premises hereinbefore mentioned, and intended to be hereby granted and released, and every part and parcel thereof with their

and every of their appurtenances, to and for the use and behoof of the said
 , heirs and assigns forever, as by him or them, or by his or their
 counsel, learned in the law, shall be reasonably devised, or advised and re-
 quired.

WITNESS hand and seal, this day of , in the year of our
 Lord one thousand nine hundred and , and in the one hundred and
 year of the independence of the United States of America.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signature.]

RENUNCIATION OF DOWER.

THE STATE OF SOUTH CAROLINA, }
 County. }

I, , do hereby certify unto all whom it may concern, that Mrs. ,
 the wife of the within named , did this day appear before me, and upon
 being privately and separately examined by me, did declare that she does
 freely, voluntarily, and without any manner of compulsion, dread, or fear of
 any person or persons whomsoever, renounce, release, and forever relinquish
 unto the within named , heirs and assigns, all her interest and
 estate, and also all her right and claim of dower, of, in, or to all and singular
 the premises within mentioned and released.

GIVEN under my hand seal, this day of , Anno Domini 19 ,

[Signature and seal.]

SOUTH DAKOTA.

A grant cannot be delivered to grantee conditionally. Delivery to him or
 his agent as such is necessarily absolute; and instrument takes effect there-
 upon discharged of any condition on which the delivery was made. Civil Code
 of 1908, § 924.

Though a grant be not actually delivered into the possession of grantee,
 it is to be deemed constructively delivered where instrument is, by agree-
 ment of the parties at time of execution, understood to be delivered, and
 under such circumstances that the grantee is entitled to immediate delivery;
 or, where it is delivered to a stranger for benefit of grantee, and his assent
 is shown or may be presumed. Ibid., § 927.

Words of inheritance or succession are not requisite to transfer a fee in
 real property. Ibid., § 934.

An estate in real property other than estate at will or for term not exceed-
 ing one year, can be transferred only by operation of law, or by instrument
 in writing, subscribed by party disposing of same, or by his agent thereunto
 authorized by writing. Ibid., § 938.

A grant of an estate in real property may be made, in substance as follows:

1019. Deed, Statutory Form.

This grant made the day of in the year between A. B., of
 , of the first part, and C. D., of , of the second part, WITNESSETH:
 That the party of the first part hereby grants to the party of the second part,
 in consideration of dollars, now received, all the real property situated
 in and bounded (or, described) as follows: [description].

WITNESS the hand of the party of the first part

[Signatures and seals.]

Ibid., § 940.

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of grantor for himself and his heirs to grantee, his heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in same manner as if they had been expressly inserted in the conveyance. *Ibid.*, § 942.

Every grant of an estate in real property is conclusive against grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who, in good faith, and for valuable consideration, acquires title or lien by an instrument that is first duly recorded. *Ibid.*, § 943.

A grant, made by owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work forfeiture of his estate, but passes to grantee all the estate which the grantor could lawfully transfer. *Ibid.*, § 944.

A transfer of land bounded by a highway passes title of person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant. *Ibid.*, § 945.

A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. *Ibid.*, § 947.

Any instrument affecting the title to or possession of real property may be recorded as by law provided. *Ibid.*, § 961.

An instrument may be recorded in the proper office, if the original is at the same time deposited therein, to remain for public inspection, but not otherwise. *Ibid.*, § 963.

Instruments entitled to be recorded must be recorded by the register of deeds of county in which the real property affected thereby is situated.

An instrument is deemed to be recorded when it is deposited in the register's office, with the proper officer, for record. *Ibid.*, § 965.

Every conveyance of real property, other than a lease for term not exceeding one year, is void against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for valuable consideration, whose conveyance is first duly recorded. *Ibid.*, § 986.

No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded. *Ibid.*, § 988.

The recording and deposit of an instrument are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording. *Ibid.*, § 989.

An unrecorded instrument is valid between the parties thereto and those who have notice thereof. *Ibid.*, § 990.

The only covenants which run with the land are those specified in this title, and those which are incidental thereto. *Ibid.*, § 1137.

Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land. *Ibid.*, § 1138.

The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of grantee. *Ibid.*, § 1139.

A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns, or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned. *Ibid.*, § 1140.

A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property. *Ibid.*, § 1141.

Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. *Ibid.*, § 1143.

An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of seizin, quiet enjoyment, further assurance, general warranty, and against incumbrances. *Ibid.*, § 1307.

The covenants mentioned in the last section must be in substance as follows:

The party of the first part covenants with the party of the second part that the former is now seized in fee-simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be, reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

Ibid., § 1308.

1020. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that _____, of the _____, county of _____, and state of South Dakota, part _____ of the first part, for and in consideration of the sum of _____ dollars, to _____ in hand paid by _____, of the county of _____, and _____ of _____, part of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said part _____ of the second part, _____ heirs and assigns forever, the following described real estate lying and being in the county of _____, and state of South Dakota, to wit: [*description*]

To HAVE AND TO HOLD the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said part _____ of the second part, _____ heirs and assigns forever. And the said _____, part of the first part, for _____ sel _____, heirs, executors and administrators, do _____ covenant with the said part _____ of the second part, _____ heirs and assigns, that _____ well seized in fee of the lands and premises aforesaid, and ha _____ good right to sell and convey the same in manner and form aforesaid; and that the same are free from all encumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said part _____ of the second part, _____ heirs and assigns, against all persons lawfully claiming, or to claim, the whole or any part thereof; the said part _____ of the first part will warrant and forever defend.

And the said _____ hereby relinquishes _____ right of homestead in and to the above described premises.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set
hand and seal, this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

TENNESSEE.

On all transfers of realty there shall be levied and paid, in lieu of all other taxes, a state tax of \$1 per \$1,000 on the consideration, which shall in no case be less than the value of the property, which shall be collected by the clerk of the county court; and the county register is hereby required not to record said deed until the clerk certifies that this tax has been paid; but no fee shall be charged for such certificate of registration of the same, and such certificate need not be registered. Code Supplement 1897-1903, p. 103, § 8, of chap. 257 of 1903.

At any time after the sale of lands for taxes the lands or any part thereof, struck off to the state treasurer, and reported to the circuit court, may be sold at private sale by the clerk thereof. Ibid., p. 177, § 63 of chap. 258 of 1903.

The form of deed at such private sale shall be to the following effect:

1021. Tax Deed on Private Sale, Statutory Form.

"I, , clerk of the circuit court of county, state of Tennessee, in consideration of the sum of \$ paid to me by , hereby convey to said , the following described land, situated in said county, to wit: [here describe the land], sold to the treasurer of the state for delinquent taxes on property assessed to , for the year , on the day of , A. D. . The time of redemption having expired, this conveyance is made pursuant to the authority vested in me by law.

"WITNESS my hand and seal of said county [court] hereunto affixed, this day of , A. D. .

, Clerk."

Ibid., p. 178, § 63c of chap. 258 of 1903.

The deed made by the clerk as above provided shall be prima facie evidence of the facts stated in the deed. Ibid., p. 178, § 63d of chap. 258 of 1903.

After the time for redemption of any tract of land sold for taxes to individuals shall have expired, any purchaser shall be entitled to receive from the clerk of the circuit court a conveyance of the property so purchased. Ibid., pp. 179, 180, § 65 of chap. 258 of 1903.

The form of said deed shall be in effect, as follows:

1022. Final Tax Deed, Statutory Form.

"STATE OF TENNESSEE, }
County of } ss.

"BE IT KNOWN, That , the county trustee of said county of , did, on the day of , A. D. , according to law, sell the following land, situated in said county, assessed to , to wit: [here describe the land] for the taxes assessed thereon for the year [if sold for other taxes, it shall be so stated], when became the best bidder therefor, and the purchaser thereof at the sum of \$ and cents; and the time for redemption having expired, I, , clerk of the circuit court of said

county, by virtue of the authority vested in me by law, hereby convey said land to

“WITNESS my hand and seal of said court hereunto affixed, this day of

“ , Clerk.”

Ibid., p. 180, § 65a of chap. 258 of 1903.

Said conveyance, as well as the conveyance provided for in section 63, shall be an assurance of perfect title to the purchaser of said land; and no such conveyance shall be invalidated in any court, except by proof that the land was not liable to sale for taxes or that the taxes for which the land was sold have been paid before said sale, and if any part of the taxes for which said land was sold is illegal, or not chargeable on it, but a part is chargeable, that shall not affect the sale, nor invalidate the conveyance thereunder, unless it appears that before the sale the amount legally chargeable on the land was paid or tendered to the county trustee, and no other objection either in form or substance to the sale, or the title thereunder, shall avail in any controversy involving them. Ibid., p. 180, § 65c of chap. 258 of 1903.

Every gift, grant, conveyance of lands, tenements, hereditaments, goods, or chattels, or of any rent, common or profit out of the same, by writing or otherwise, and every bond, suit, judgment, or execution, had or made and contrived, of malice, fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures; or to defraud or to deceive those who shall purchase the same lands, tenements, or hereditaments, or any rent, profit, or commodity out of them, shall be deemed and taken only as against the person, his heir, successors, executors, administrators, and assigns, whose debts, suits, demands, estates, or interests, by such guileful and covinous practices as aforesaid, shall or might be in anywise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretense, color, feigned consideration, expressing of use, or any other matter or thing, to the contrary notwithstanding. Annotated Code of 1896, § 3143.

No deed of conveyance for lands, in what manner or form soever drawn, shall be good and available in law, as to strangers, unless the same be registered by the register of the county where the land lies. Ibid., § 3671.

The term “heirs,” or other words of inheritance, shall not be requisite to create or convey an estate in fee, and every grant of real estate, or any interest therein, shall pass all the estate or interest of the grantor, unless the intent to pass a less estate or interest shall appear by express terms, or be necessarily implied in the terms of the instrument. Ibid., § 3672.

Any person seized or possessed of an estate in general or special tail, whether by purchase or descent, shall be held and deemed to be seized and possessed of the same in fee simple, fully and absolutely, without any condition or limitation whatsoever, to him, his heirs and assigns, forever, and shall have full power and authority to sell or devise the same as he thinks proper; and such estate shall descend under the same rules as other estates in fee simple. Ibid., § 3673.

Instruments in relation to real property, executed by an agent or attorney, may be signed by him for his principal, or by writing the name of the principal by him as agent or attorney, or by simply writing his own name or his principal's name, if the instrument on its face shows the character in which it is intended to be executed. Ibid., § 3679.

The following or other equivalent forms, varied to suit the precise state of facts, are sufficient for the purposes contemplated, without further circumlocution:

1023. Deed in Fee With General Warranty, Statutory Form.

“I hereby convey to A. B. the following tract of land [*describing it*], and I warrant the title against all persons whomsoever.”

COVENANTS OF SEIZIN, POSSESSION, AND SPECIAL WARRANTY.

"I covenant that I am seized and possessed of the said land, and have a right to convey it, and I warrant the title against all persons claiming under me."

1024. Quitclaim Deed.

"I hereby quitclaim to A. B. all my interest in the following land" [*describing it*].

Ibid., § 3680.

The following writings may be registered:

All agreements and bonds for the conveyance of real estate; all powers of attorney authorizing the sale, transfer, or conveyance of real estate, or for any other purpose, or appointing an agent to transact any business whatever; all revocations of powers of attorney; all deeds for the absolute conveyance of any lands, tenements, or hereditaments, or any estate therein; copies of deeds of conveyance of lands being in different counties in this state, certified by the register of the county where same has been first registered; deeds of gift of any real estate; all mortgages and deeds of trust of real property; deeds and mesne conveyances for the settlement of real property, in consideration of marriage; all other deeds of every description; transfers or assignments of plats and certificates of survey or locations of land; and leases for more than three years from the time of making the same. Ibid., § 3697.

If the instrument be a conveyance, or for the conveyance of land, it shall be registered in the county where the land lies, unless it lies partly in two or more counties, and then it may be registered in either; and where it contains several tracts of land, lying in different counties, it shall be registered in each of the counties where any of said tracts lie. Ibid., § 3705.

Where any deed of conveyance, in which more than one tract of land is conveyed, lying in different counties in this state, has been registered in any county in this state in which one or more of said tracts lie, it shall be lawful for anyone interested therein, to have registered in the county or counties in which the other tract or tracts are situated, a copy of said deed or conveyance, certified by the register of the county in which said deed of conveyance may have been thus registered, and such registration shall be good and valid in law, and a copy thereof shall be evidence as if such registration had been of the original deed of conveyance. Ibid., § 3711.

In all cases where any elders, trustees, or other church officer or officers, in any of the various churches or organizations of any religious denominations in this state, shall have had, or may have, any lands conveyed to them for the use of their respective churches or congregations as building sites, or for any other purpose, by deed, grant, devise, or in any other manner, they or their successors in office, according to the regulations of such church or congregation, may sell and convey the same by deed, which deed, when officially signed by such elders, trustees, or other church officer or officers, or their successors in office, and registered as other deeds, shall pass the title, whether for life, for years, or in fee, to such land to the purchaser in as full and ample a manner as if said church officer or officers held the same as a corporation, and had conveyed it by deed under their corporate deed [*name*]. Ibid., § 2564.

In all cases of written agreements or contracts for the conveyance of land in this state, where the person executing the same dies before final conveyance is made, his personal representatives may execute the conveyance to the person with whom such agreement or contract was made, his heirs or assigns, according to the forms prescribed for the conveyance of real estate. Ibid., § 3692.

If the person with whom such agreement or contract was made is himself the personal representative, the county court granting administration may

appoint a guardian or representative of the heirs, who shall make the conveyance according to the written agreement. *Ibid.*, § 3693.

If there are several personal representatives, a deed by either one of them will be as valid as if executed by all. *Ibid.*, § 3694.

The personal representative cannot be required to execute a conveyance under the preceding provisions, unless the written agreement or contract, duly registered, or a certified copy thereof from the register's books, is produced and delivered to him. *Ibid.*, § 3695.

In case the agreement or contract is for part of a tract of land not ascertained by metes and bounds, the personal representatives shall execute the conveyance according to the description given in the contract. *Ibid.*, § 3696.

The decree may divest the title to real property out of any of the parties and vest it in others, and such decree shall have all the force and effect of a conveyance by such parties, executed in due form of law. *Ibid.*, § 6301.

The court may also appoint a commissioner to execute all necessary conveyances, releases, and acquittances, either in his name or in the name of the parties, as the court may think proper; and the instrument so executed will be as valid as if executed by the party. *Ibid.*, § 6302.

If the decree direct a conveyance, release, or acquittance to be made, and the party against whom the decree is rendered fails or refuses to execute the same in the time specified in the decree, or in a reasonable time, if no particular time is thus specified, the decree operates in all respects as if the conveyance, release, or acquittance was made. *Ibid.*, § 6303.

The courts of this state having jurisdiction to sell lands, instead of ordering parties to convey, may divest and vest title directly by decree, or empower the clerk to make title. *Ibid.*, § 5915.

The decree or deed of the clerk, as the case may be, shall have the same force and effect as a conveyance by the party, and shall be registered. *Ibid.*, § 5916.

And, in such cases, where the sale is made at the voluntary instance of parties, the decree or deed of the clerk shall imply a covenant of seizin and warranty of title by the parties whose interest is sold, their heirs and representatives, unless otherwise provided in the face of the decree. *Ibid.*, § 5917.

Any of said instruments so registered, shall be received as evidence in any of the courts or judicial tribunals of the state, subject, nevertheless, to be impeached and proved to be a forgery, or to be otherwise inoperative, if the fact be so. *Ibid.*, § 3748.

All of said instruments shall have effect between the parties to the same, and their heirs and representatives, without registration; but as to other persons, not having actual notice of them, only from the noting thereof for registration on the books of the register, unless otherwise expressly provided. *Ibid.*, § 3749.

All of said instruments so registered shall be notice to all the world from the time they are noted for registration, as prescribed in section 567, and shall take effect from said time. *Ibid.*, § 3750.

It shall be the duty of the register:

(1) To keep a book, each of which shall be divided into six columns, with titles or heads as follows: Date of reception; Grantors; Grantees; County; No. of Acres; Fees Received.

(2) To enter in said book all deeds and other instruments left to be registered, noting in the first column the day and hour of reception, and the other particulars in the appropriate columns.

(3) Without delay to register the same in order of time of its reception. *Ibid.*, § 567.

Any of said instruments first registered or noted for registration shall have preference over one of earlier date, but noted for registration afterwards, unless it is proved in a court of equity, according to the rules of said court, that the party claiming under the subsequent instrument had full notice of the previous instrument. *Ibid.*, § 3751.

Any of said instruments not so registered, or noted for registration, shall be null and void as to existing or subsequent creditors of, or bona fide purchasers from the makers without notice. *Ibid.*, § 3752.

1025. Warranty Deed.

FOR AND IN CONSIDERATION of the sum of dollars, have bargained and sold, and by these presents do transfer and convey, unto the said , heirs and assigns, a certain tract or parcel of land in county, state of Tennessee, as follows: [*description*]

TO HAVE AND TO HOLD the said tract or parcel of land, with the appurtenances, estate, title, and interest thereto belonging, to the said , heirs and assigns forever. And do covenant with the said , that lawfully seized and possessed of said land in fee simple; have a good right to convey it, and the same is unencumbered.

And do further covenant and bind , heirs and representatives, to warrant and forever defend the title to said land to the said , heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS hand , this day of , 19 .

[*Signatures.*]

Witness:

[*Signatures.*]

1026. Quitclaim Deed.

KNOW ALL MEN BY THESE PRESENTS, that we, , in consideration of dollars, in hand paid by , do hereby demise, release and forever quitclaim unto the said , and his heirs, all our title, interest and estate, legal and equitable, in the following premises, to wit: A certain tract or parcel of land, situated and lying in [*description*].

IN TESTIMONY WHEREOF, witness hand and seal , this day of , 19 .

[*Signature and seal.*]

Witness:

[*Signature.*]

1027. Partial Payment Warranty Deed and Joint Agreement.

FOR AND IN CONSIDERATION of the sum of dollars, paid and to be paid by as follows: dollars, cash, the receipt of which is hereby acknowledged, and for the remainder the said ha executed promissory notes for dollars each, of even date herewith, payable to the order of , and bearing six per cent. interest from , with lien retained on the property herein conveyed to secure their payment. The first one of said notes falls due , 19 , and the others thereafter, until all are paid, have bargained and sold, and by these presents do transfer and convey unto the said , heirs and assigns, a certain tract or parcel of land in county, state of Tennessee, as follows: [*description*].

TO HAVE AND TO HOLD the said tract or parcel of land, with the appurtenances, estate, title and interest thereto belonging, to the said , heirs and assigns, forever. And do covenant with the said that

lawfully seized and possessed of said land in fee simple, have a good right to convey it, and the same is unincumbered.

And do further covenant and bind , heirs and representatives to warrant and forever defend the title to said land to the said , heirs and assigns, against the lawful claims of all persons whomsoever.

But this conveyance is upon the following conditions, which are a part of the consideration thereof, without which this conveyance would not have been made, viz.:

It is expressly agreed by and between the said and , that if any of said notes shall at any time be unpaid, either in whole or in part, months after maturity, all of the notes shall thereupon become due.

The said agree to keep the on property conveyed insured to the amount of dollars, payable to the said as collateral security to said note , and to pay all taxes when due; and the said further agree that if fail to keep the said insured, or to pay any taxes as agreed, the said , or the lawful holder of said notes, may have the building insured, or may pay the taxes, and in either event the amount paid shall become part of the indebtedness secured by the lien herein reserved, and shall bear interest from the date of payment. If the said shall fail to repay any premium or taxes and interest within two months from the payment thereof by the said , such failure shall render all of said notes due at the expiration of such time.

The said further agree that if said notes become due upon any contingency hereinbefore stated, the said , or the lawful owner of said notes then unpaid, after advertising once a week for at least three weeks in some newspaper published in county, the first publication to be made at least twenty days before the sale, shall have authority to sell the property conveyed, by public auction, at the door of the court-house in , Tennessee, to the highest bidder, for cash, free from the rights of redemption, homestead, and dower; to execute a conveyance to the purchaser, and to apply the proceeds of sale —

First, to the payment of any taxes that may be a lien on the property;

Second, to the payment of all expenses incident to advertising and selling;

Third, to the satisfaction of the indebtedness secured by said vendor's lien; and, last, any balance shall be paid to the said , or legal representatives.

The said further agree that the said may execute the power of sale herein contained without giving bond or taking oath; that the said , or the lawful owner of any of the notes herein secured, may bid at any sale under said power; and that if the said becomes the purchaser, the person holding the office of county court clerk for said county shall have authority to convey the property to the said , and the said further agree that the purchaser may re-enter and take possession of the property without hindrance or delay.

IN WITNESS WHEREOF hereunto set signature this day of , 19 .

[Signatures.]

As evidence of ratification and acceptance of the foregoing terms and conditions, join herein and subscribe name hereto this day of , 19 .

[Signatures.]

TEXAS.

No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. Sayles' Civil Statutes of 1897, art. 624.

A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless filed for record with the clerk of the county in which the land, or a part thereof, is situated. Ibid., art. 625.

All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements or hereditaments as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured. Ibid., art. 626.

Every estate in lands which shall be granted or conveyed to one, although other words heretofore necessary at common law to transfer an estate in fee-simple be not added, shall be deemed a fee-simple, if a less estate be not limited by express words or do not appear to have been granted or conveyed by construction or operation of law. Ibid., art. 627.

The following form, or the same in substance, shall be sufficient as a conveyance of the fee-simple of any real estate with a covenant of general warranty, viz.:

1028. Warranty Deed, Statutory Form.

"THE STATE OF TEXAS, }
County of , }

"KNOW ALL MEN BY THESE PRESENTS, That I, , of the , [give name of city, town or county], in the state aforesaid, for and in consideration of dollars, to me in hand paid by , have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said , of the [give name of city, town or county], in the state of , all that certain [describe the premises]. To have and to hold the above described premises, together with all and singular the rights and appurtenances, thereto in anywise belonging, unto the said , his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said , his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

WITNESS my hand, this day of , A. D. .

"Signed and delivered in the presence of .

[Signature.]

Ibid., art. 628.

No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter made that may be deemed proper and advisable by the purchaser and seller; and

other forms not contravening the laws of the land shall not be invalidated. *Ibid.*, art. 629.

Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this state, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them. *Ibid.*, art. 631.

An estate of freehold or inheritance may be made, to commence in futuro, by deed or conveyance, in like manner as by will. *Ibid.*, art. 632.

From the use of the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee-simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That said estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. *Ibid.*, art. 633.

When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail, either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance can be enforced, as far as the rules of law will permit. *Ibid.*, art. 637.

The county clerks of the several counties shall be the recorders for their respective counties. *Ibid.*, art. 4602.

When any instrument of writing authorized by law to be recorded shall be deposited in the recorder's office for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof and the time of delivery for record, *Ibid.*, art. 4605.

Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, in the order and as of the time when the same shall have been deposited for record. *Ibid.*, art. 4606.

Every such instrument of writing shall be considered as recorded from the time it was deposited for record. *Ibid.*, art. 4607.

The following instruments of writing are authorized to be recorded, viz.: All deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements. *Ibid.*, art. 4639.

All bargains, sales and other conveyances whatever, of any lands, tenements and hereditaments, whether they may be made for passing any estate of freehold or inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages whatsoever, which shall be made and executed, shall be void as to all creditors and subsequent purchasers for valuable consideration without notice, unless filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall nevertheless be valid and binding. *Ibid.*, art. 4640.

No deed, conveyance, or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record. *Ibid.*, art. 4640a.

All deeds, conveyances, mortgages, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be re-

corded in the county where such real estate or a part thereof is situated; but all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes. *Ibid.*, art. 4641.

Every conveyance, covenant, agreement, deed, deed of trust or mortgage in this chapter (articles 4637-4652a) mentioned or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the state where the same has been regularly recorded, although the land mentioned may not have been situated in the county where such instrument was recorded, may be recorded in the county where the land lies, and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so delivered to such clerk to be recorded, and from that time only; but all certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record; and nothing in this article shall be construed to make valid any instrument which was at the time of its execution from any cause invalid. *Ibid.*, art. 4642.

Each recorder shall also record all powers of attorney, and all other instruments of writing authorized or required to be recorded in his office, which shall be delivered to him for record. *Ibid.*, art. 4644.

The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument. *Ibid.*, art. 4652.

1029. Warranty Deed, with Vendor's Lien.

THE STATE OF TEXAS, }
County of , }

KNOW ALL MEN BY THESE PRESENTS, that , of the county of , state of , for and in consideration of the sum of dollars, to paid and secured to be paid by as follows: [*description*] have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said , of the county of , state of , all that certain [*description*].

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said , heirs and assigns forever, and do hereby bind , heirs, executors and administrators to warrant and forever defend, all and singular the said premises unto the said , heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

But it is expressly agreed and stipulated that the vendor's lien is retained against the above described property, premises and improvements, until the above described note, and all interest thereon, are fully paid according to face, effect and reading, when this deed shall become absolute.

WITNESS hand at , this day of , A. D. 19 .

[*Signatures.*]

Witness at request of grantor:

[*Signature.*]

1030. Quitclaim Deed.

THE STATE OF TEXAS, }
 County of . }

KNOW ALL MEN BY THESE PRESENTS, that , of the county of , and state of , for and in consideration of the sum of dollars to in hand paid by , of the county of , and state of , the receipt of which is hereby acknowledged, do, by these presents, bargain, sell, release and forever quitclaim unto the said , heirs and assigns, all right, title and interest in and to that certain tract or parcel of land lying in the county of , and state of Texas, described as follows, to wit: [description]

TO HAVE AND TO HOLD the said premises, together with all and singular the rights, privileges and appurtenances thereto in any manner belonging, unto the said , heirs and assigns forever, so that neither , the said , nor heirs, nor any person or persons claiming under , shall at any time hereafter, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part thereof.

[Signatures.]

WITNESS hand at , this day of .

WITNESSES at the request of grantor:

[Signatures.]

1031. Warranty Deed.

THE INDENTURE, made this day of , 19 , between , part of the first part, and , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid by the said part of the second part, do by these presents, grant, bargain, sell, convey and confirm unto the said part of the second part, heirs, executors, administrators and assigns, the following real estate, lying and being in the county of , state of Washington, described as follows, to wit: [description]

With all and singular the hereditaments and appurtenances to the same belonging or appertaining, the reversion or reversions, the remainder or remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the above granted premises unto the said part of the second part, heirs, executors, administrators and assigns forever, with all the privileges and appurtenances thereto belonging.

And the said part of the first part do covenant for and heirs, executors, administrators and assigns to and with the said part of the second part, heirs, executors, administrators and assigns as follows:

First. That the said part of the first part seized of the said premises in fee simple, and ha good right to convey the same.

Second. That the said part of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from all encumbrances.

Fourth. That the said part of the first part will warrant and defend the title to the same forever against all lawful claims and demands whatsoever.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[Signatures and seals.]

Signed and sealed in the presence of

[Signature.]

UTAH.

The term "heirs" or other technical words of inheritance or succession are not requisite to transfer a fee in real estate. Compiled Laws of 1907, § 1970.

A fee simple title is presumed to be intended to pass by a conveyance of real estate, unless it appears from the conveyance that a lesser estate was intended. Ibid., § 1971.

A conveyance by an owner of an estate for life or years, purporting to convey a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. Ibid., § 1972.

No estate or interest in real property, other than for leases for a term of not exceeding one year, can be created, granted, assigned, or surrendered, otherwise than by act or operation of law, or by a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, or surrendering the same, or by his lawful agent thereunto authorized by writing. Ibid., § 1974.

Every conveyance of real estate, and every instrument of writing, setting forth an agreement to convey any real estate, or whereby any real estate may be affected, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record, and to all other persons who have had actual notice. Ibid., § 1975.

Every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be affected, shall be recorded as other conveyances whereby real estate is conveyed or affected are required to be recorded. Ibid., § 1977.

No such power of attorney or other instrument recorded in the manner prescribed in the preceding section shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded, or canceled of record as provided by law. Ibid., § 1978.

Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he were in the actual possession thereof. Ibid., § 1980.

Conveyances of land may be in the following form:

1032. Warranty Deed, Statutory Form.

A. B., grantor [*here insert name or names and place of residence*], hereby conveys and warrants to C. D., grantee [*here insert name or names and place of residence*], for the sum of dollars, the following described tract of land in county, Utah, [*here describe the premises*].

WITNESS the hand of said grantor this day of , A. D. 19 .

Such deed, when executed as required by law, shall have the effect of a conveyance in fee simple to the grantee, his heirs, and assigns, of the premises therein named, together with all the appurtenances, rights, and privileges

thereto belonging, with covenants from the grantor, his heirs, and personal representatives, that he is lawfully seized of the premises; that he has good right to convey the same; that he guarantees the grantee, his heirs, and assigns in the quiet possession thereof; that the premises are free from all incumbrances; and that the grantor, his heirs, and personal representatives will forever warrant and defend the title thereof in the grantee, his heirs, and assigns, against all lawful claims whatsoever. Any exceptions to such covenants may be briefly inserted in such deed following the description of the land. *Ibid.*, § 1981.

Conveyances of land may also be substantially in the following form:

1033. Quitclaim Deed, Statutory Form.

A. B., grantor [*here insert name or names and place of residence*], hereby quitclaims to C. D., grantee [*here insert name or names and place of residence*], for the sum of dollars, the following described tract of land in county, Utah [*here describe the premises*].

WITNESS the hand of said grantor this day of , A. D. 19 .

And such deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described, and all rights, privileges, and appurtenances thereto belonging at the date of such conveyance. *Ibid.*, § 1982.

A conveyance is to be recorded in the office of the recorder of the county in which the real estate is situated. *Ibid.*, § 1999.

Every conveyance or instrument in writing affecting real estate, or a copy thereof, required by law to be recorded in the office of the county recorder, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders shall be deemed to purchase and take with notice. *Ibid.*, § 2000.

Every conveyance of real estate within this state, which shall not be recorded as provided in this title, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded. *Ibid.*, § 2001.

No estate or interest in lands, other than leases for a term not exceeding one year, shall be created, granted, assigned, or surrendered, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, or surrendering the same, or by his lawful agent thereunto authorized by writing. *Ibid.*, § 2461.

Every conveyance of any estate or interest in lands, or the rents or profits of lands, and every charge upon lands, or the rents or profits thereof, made or created with intent to defraud prior or subsequent purchasers thereof for a valuable consideration, shall be void as against such purchasers. *Ibid.*, § 2464.

No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who had actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended. *Ibid.*, § 2465.

The provisions of this title (§§ 2461-2478) shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor. *Ibid.*, § 2476.

Any power of attorney or other instrument in writing entitled to record may be sent by telegraph or telephone, and the telegraphic or telephonic copy or duplicate thereof shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original. *Ibid.*, § 2698.

A right to the use of water appurtenant to the land shall pass to the grantee of such land, and, in cases where such right has been exercised in irrigating different parcels of land at different times, such right shall pass to the grantee of any parcel of land on which such right was exercised next preceding the time of the execution of any conveyance thereof; subject, however, in all cases to payment by the grantee of any such conveyance of all amounts unpaid on any assessment then due upon any such right; but any such right to the use of water, or any part thereof, may be reserved by the grantor in any such conveyance, by making such reservation in express terms inserted in such conveyance, or may be separately conveyed. *Ibid.*, § 1288 x 32.

Water rights shall be transferred by deeds, in substantially the same manner as real estate, except when they are represented by shares of stock in a corporation, and such deeds shall be recorded in the office of the recorder of the county where the place of diversion of the water from its natural channel is situated. Every deed of water right so recorded shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders shall be deemed to purchase and take with notice. *Ibid.*, § 1288 x 33.

Every deed of water right within this state, which shall not be recorded as provided in this title, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be first duly recorded. *Ibid.*, § 1288 x 34.

A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the center of the highway. *Ibid.*, § 1120.

When a person who is bound by contract in writing to convey any real estate dies before making the conveyance, and in all cases when such decedent, if living, might be compelled to make such conveyance, the court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto. *Ibid.*, § 3935.

1034. Warranty Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand , between , the part of the first part, and , the part of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to them in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said part of the second part, and to heirs and assigns forever, all that certain piece or parcel of land situate, lying and being in , county of , state of , bounded and described as follows, to wit: [*description*]

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, homestead rights, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to said premises, and every part and parcel thereof, with the appurtenances, and the said hereby covenants and agrees to and with the said part of the second part, that she has a perfect right to sell and relinquish her right of dower in the land aforesaid, and in consideration of the premises and of the

sum of one dollar to her in hand paid by the part of the second part, she has released, relinquished and conveyed, and by these presents does release, relinquish and convey unto the said part of the second part, heirs and assigns, forever, all rights or privileges, of dower of, in or to said premises and every part thereof.

To HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said part of the second part, and to heirs and assigns forever. And the said parties of the first part, and their heirs, the fee-simple title to the said premises, and the quiet and peaceable possession thereof in the said part of the second part, heirs and assigns, against the said parties of the first part, and their heirs, and against any and all persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

[Signatures.] [Signatures and seals.]

1035. Mining Deed — Quitclaim.

THIS DEED, made this day of , in the year of our Lord one thousand nine hundred and , between , part of the first part, and the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, lawful money, to paid by the part of the second part, the receipt whereof is hereby acknowledged, by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said part of the second part, and assigns forever, all certain right to land, mining claim and property containing gold, silver, lead, copper and other precious metals, situated in mining district, county, state of Utah, viz.: [description]

TOGETHER with all metals, ores, gold and silver-bearing quartz, rock and earth therein; and all dips and spurs, privileges and franchises, tenements, hereditaments and appurtenances thereto incident or belonging, or therewith used and enjoyed, and all the estate, right, title, interest, property, claim and demand whatsoever, legal and equitable, as well in possession as in expectancy, of the part of the first part, of, in or to said premises, and every part thereof.

To HAVE AND TO HOLD the same unto the part of the second part, and assigns forever.

And the said hereby relinquish all rights of survivorship, dower and substitute for dower, and grant and release all interests and estates whatsoever, whether vested or inchoate, and forever bar the same.

IN WITNESS WHEREOF, the said part of the first part has hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

VERMONT.

Where, by the common law, a person might become seized in fee-tail of lands, by virtue of a devise, gift, grant or other conveyance, or by other means, said person, instead of being seized thereof in fee-tail, shall be seized thereof for his natural life only, and the remainder shall pass in fee-simple absolute to the person to whom the estate-tail would pass, on the death of the first grantee, devisee or donee in tail, first pass, according to the course of the common law, by virtue of such devise, gift, grant or conveyance. Public Statutes of 1906, § 2565.

A conveyance by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee the estate which said tenant could lawfully convey. *Ibid.*, § 2567.

A person owning lands adjoining Lake Champlain may erect a wharf or storehouse, and breakwater to protect the same, and extend the same from his land in a direct course into the lake, to any distance within the state between such land and the channel of the lake; but such wharf, storehouse or breakwater shall not extend into the lake so as to impede ordinary navigation. *Ibid.*, § 2568.

Conveyance of land or of an estate or interest therein may be made by deed executed by a person having authority to convey the same, or by his attorney, and recorded as provided in this chapter (chap. 121, §§ 2572-2607). *Ibid.*, § 2572.

A public or private corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose. *Ibid.*, § 2576.

Deeds and other conveyances of lands, or of an estate or interest therein, shall be signed by the party granting the same, and recorded at length in the clerk's office of the town in which such lands lie. *Ibid.*, § 2577.

Deeds and conveyances of lands in an unorganized town, gore or grant shall be recorded by the clerk of the county in which such lands lie, in a book to be kept for that purpose, which shall be a sufficient record thereof. *Ibid.*, § 2579.

A purchaser of lands may, in addition to the record in the town clerk's office, cause his deed or other conveyance, with the certificate of its record in the town clerk's office, to be recorded by the county clerk of the county in which such lands lie, in the book kept for the purpose of recording deeds; and, if the records of a town in which such deed or conveyance is recorded are destroyed, an attested copy of such deed or other conveyance, from the office of said county clerk, shall be of the same validity as a copy from the town clerk's office. *Ibid.*, § 2580.

No deed of bargain and sale, mortgage or other conveyance of land, in fee-simple or for term of life, or a lease for more than one year from the making thereof, shall be effectual to hold such lands against any person but the grantor and his heirs, unless the deed or other conveyance is recorded as provided in this chapter. *Ibid.*, § 2581.

Estates or interests in lands, created or conveyed without an instrument in writing signed by the grantor or by his attorney, shall have the effect of estates at will only; and no estate or interest in lands shall be assigned, granted or surrendered, unless by a writing signed as aforesaid, or by operation of law. *Ibid.*, § 2582.

No deed or other conveyance of lands or of an estate or interest therein, made by virtue of a power of attorney, shall be of any effect, or admissible in evidence, unless such power of attorney is signed, and recorded in the office where such deed is required to be recorded. *Ibid.*, § 2585.

When a deed is made by virtue of a power of attorney thus executed and recorded, a certified copy of the record of such power of attorney may be read in evidence when the original cannot be produced. *Ibid.*, § 2586.

The vendor of real estate shall have no lien thereon for unpaid purchase money, except such lien as is created and evidenced by deed, executed and recorded as deeds of conveyance of real estate. *Ibid.*, § 2587.

The grantee of a mine, quarry or the right of mining and quarrying in severance from the ownership of the soil shall, within thirty days after its execution, cause his deed, lease or other instrument to be recorded in the land records of the town where the land lies; and he shall also, within such time, cause such deed, lease or other instrument, or a copy thereof certified by the town clerk in whose office such instrument is required to be recorded, to be recorded in the office of the secretary of state. A grantee failing to comply with a foregoing provision shall forfeit to the town on failure to file for record in the town clerk's office, and to the state on failure to file for record in the secretary of state's office, fifty dollars to be recovered in an action on this statute. If a final judgment under this section is not paid within ten days from its date, the grantee's interest in such property may be taken and sold upon execution to satisfy such judgment. *Ibid.*, § 2588.

The provisions of the preceding section, relating to the filing for record of a deed, lease or other instrument, or a certified copy thereof, in the office of the secretary of state, shall not apply to a mine, quarry, mining or quarry right which has been carried on for a period of two months in the year preceding the time specified for recording such instrument. *Ibid.*, § 2589.

If a person sells and conveys lands, or an estate or interest therein, he shall, within six months after request made in writing by a subsequent purchaser of the same lands, or an estate or interest therein, cause his title-deed to be recorded in the proper office. *Ibid.*, § 2599.

If said person, after being so requested, and after the expiration of such six months, has not procured his deed to be recorded, a justice may, on the complaint of the party whose right or title is liable to be affected by such neglect, issue his warrant to bring said person forthwith before him to be examined in the premises. *Ibid.*, § 2600.

If said person does not show sufficient cause for omitting to procure his deed to be recorded, the justice shall sentence him to jail, there to remain until he procures it to be recorded, and pays the costs of the complaint and commitment; and either party may appeal from the decision of said justice. Said person shall also be liable for damages in an action on the case to the party whose right or title is affected. *Ibid.*, § 2601.

Deeds, leases and other conveyances of lands, duly executed and recorded, shall have the effect to convey such title therein as the grantor or lessor may have, notwithstanding any actual possession thereof by any other person claiming the same. *Ibid.*, § 2606

Fraudulent and deceitful deeds, conveyances and alienations of lands, or of an estate or interest therein, and charges upon lands, or upon the rents and profits thereof, procured, made or suffered with intent to avoid a right, debt or duty of a person, shall, as against the person whose right, debt or duty is so intended to be avoided, his heirs or assigns, be void. *Ibid.*, § 2607.

When a deceased person was in his lifetime under contract, binding at law or in equity, to deed lands, the probate court may, on application for that purpose, grant license to the executor or administrator of said deceased person to convey such lands according to such contract, or with such modifications as are agreed upon by the parties and approved by the court; and, if the contract is to convey lands to the executor or administrator, the judge of the court shall execute the deed. The deed, executed by said executor, administrator or judge, shall be as effectual to convey such lands as if executed by the deceased person in his lifetime; but no probate court shall grant such license to deed the lands of a deceased person until notice of the application for that purpose has been given to all persons interested, under an order of such court, appointing a time and place of hearing, and published three weeks successively, previous thereto, in such newspaper as the court directs; nor if it appears to the court on a hearing that the assets in the hands of the executor or administrator will thereby be so reduced as to prevent a creditor from receiving his whole debt, or diminish his dividend. *Ibid.*, § 2882.

The deed executed by the officer of lands sold on execution, shall be taxed as a part of the costs on the execution at one dollar, and shall be substantially in the following form:

1036. Deed by officer Selling Real Estate Under Execution.

KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, an execution against of , in the county of , at the suit of of , in the county of , was by me, , sheriff of the county of , on the day of , A. D. 19 , levied on [*here describe the premises*]; and WHEREAS, on the day of , A. D. 19 , all the estate, right, title interest, and property of the said in the premises aforesaid, were by me, the said , sold at public auction for the satisfaction of such execution, to of , in the county of , who was the highest bidder, for the sum of dollars, which the said has since fully paid to me.

Now, by force and virtue of the law in such cases made and provided, I, the said , in consideration of the sum of money paid unto me, as aforesaid, do, by these presents, bargain, sell, and assign, and set over unto the said , heirs and assigns forever, all the estate, right, title, interest, property and inheritance of the said in and to such premises and appurtenances, at the time of the levy thereon (*or*, of the attachment as the case may be), TO HAVE AND TO HOLD such premises and appurtenances to the said heirs and assigns forever.

IN WITNESS, etc.

Ibid., § 2181.

If such real estate was attached on the original writ, the officer shall insert in the deed of sale the time of such attachment and vary the deed accordingly. Ibid., § 2182.

When a deed or other instrument is left for record in the office of the town clerk, he shall enter upon the record thereof the day and time of day when the same was received, and shall indorse upon such deed or instrument a certificate of the same fact; and he shall make a similar entry upon any paper left on file in his office. Ibid., § 3461.

All deeds and conveyances of land shall be recorded in the town clerk's office in their respective towns; and, for want thereof, in the county clerk's office of the same county. Ibid., p. 58, § 35 of chap. 2 of Constitution.

1037. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, that , of , in the county of , and state of Vermont, for the consideration of dollars, received to full satisfaction of , of , in the county of , and state of , do give, grant, bargain, sell and confirm unto the said , heirs and assigns, a certain piece of land lying and being in , in the county of , and state of Vermont, and described as follows, viz.: [*description*]

TO HAVE AND TO HOLD the above granted and bargained premises with the appurtenances thereto unto , the said , heirs and assigns forever, to them and their own proper use, benefit and behoof. And also , the said , do for , heirs, executors and administrators, covenant with the said , heirs and assigns, that at, and until the sealing of these presents, well seized of the premises, as a good indefeasible estate, in fee simple, and have good right to bargain and sell the same in manner and form as above written and that the same is free from all encum-

branches whatsoever. And furthermore the said do by these presents bind and heirs forever to warrant and defend the above granted and bargained premises to the said , heirs and assigns, against all claims and demands whatsoever.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

1038. Quitclaim Deed.

KNOW ALL MEN BY THESE PRESENTS, that , of the county of , and state , for the consideration of dollars received to full satisfaction of , of , in the county of , and state of Vermont, have remised, released and quitclaimed, and by these presents do remise, release and forever quitclaim unto the said , heirs and assigns, all right and title in and to a certain piece or parcel of land situate in in the county of , and state of Vermont, and described as follows, namely: [description]

TO HAVE AND TO HOLD the above remised, released and quitclaimed premises, with the appurtenances thereof, unto the said grantee , heirs and assigns to them and their own proper use, benefit and behoof forever; so that neither the said grantor nor heirs, nor any person or persons claiming under or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or to any part or parcel thereof forever.

IN WITNESS WHEREOF, have hereunto set hand and seal , this day of , 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

VIRGINIA.

No estate of inheritance or freehold, or for term of more than five years, in lands, shall be conveyed unless by deed or will. Code of 1904, § 2413.

An immediate estate or interest in or the benefit of a condition respecting any estate may be taken by a person under an instrument, although he be not a party thereto; and if a covenant or promise be made for sole benefit of person with whom it is not made, or with whom it is made jointly with others, such person may maintain in his own name any action thereon, which he might maintain in case it had been made with him only, and the consideration had moved from him to party making such covenant or promise. Ibid., § 2415.

If, in deed made by one as attorney-in-fact for another, the words of conveyance or the signature be in name of the attorney, it shall be as much the principal's deed as if the words of conveyance or the signature were in name of the principal by the attorney, if it be manifest on the face of deed that it should be construed to be that of principal to give effect to its intent. Ibid., § 2416.

Any interest in or claim to real estate may be disposed of by deed. Ibid., § 2418.

A writing which purports to pass or assure a greater right or interest in real estate than person making it may lawfully pass or assure, shall operate as an alienation of such right or interest in said real estate as such person might lawfully convey or assure; and when deed of alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything descends from him, his heirs shall be barred for the value of what is so descended or liable for such value. *Ibid.*, § 2419.

Where real estate is conveyed, devised or granted to any person without any words of limitation, such devise, conveyance or grant shall be construed to pass the fee simple or other the whole estate or interest which the testator or grantor had power to dispose of in such real estate, unless a contrary intention shall appear by the will, conveyance or grant. *Ibid.*, § 2420.

A deed may be made in the following form, or to the same effect:

1039. Deed, Statutory Form.

"This deed, made the day of , in the year , between [*here insert names of parties*], WITNESSETH: That in consideration of [*here state the consideration*], the said doth [*or, do*] grant unto the said , all, etc. [*Here describe the property, and insert covenants or signatures and seals*]."

Ibid., § 2437.

Every such deed conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, and interest whatever, both at law and in equity, of the grantor in or to such lands. *Ibid.*, § 2438.

Whenever in any deed there shall be used the words: "The said grantor (or the said) releases to the said grantee (or the said) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (or releasor) hath remised, released, and forever quit claimed; and by these presents doth remise, release, and forever quit claim unto the grantee, (or releasee), his heirs and assigns, all right, title and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or released,) or intended so to be, so that neither he nor his personal representative, his heirs, or assigns, shall, at any time hereafter, have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. *Ibid.*, § 2439.

When a deed uses the words "the said covenants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives, and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives, and assigns. *Ibid.*, § 2445.

A covenant by the grantor in a deed, "that he will warrant generally the property hereby conveyed," shall have the same effect as if the grantor had covenanted that he, his heirs, and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whomsoever. *Ibid.*, § 2446.

A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs, and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of the grantor, and all persons claiming or to claim by, through or under him. *Ibid.*, § 2447.

The words "with general warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed." The words "with special warranty," in the granting part of any deed, shall be deemed to be a covenant by the

grantor "that he will warrant specially the property hereby conveyed." *Ibid.*, § 2448.

A covenant by the grantor in a deed for land, "that he has the right to convey the said land to the grantee," shall have the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority, to convey the said land, with all the buildings thereon, and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed or intended so to be by the deed, and according to its true intent. *Ibid.*, § 2449.

A covenant by any such grantor "that the grantee shall have quiet possession of the said land" shall have as much effect as if he covenanted that the grantee, his heirs, and assigns, might, at any and all times thereafter, peaceably and quietly enter upon and have, hold, and enjoy, the land conveyed by the deed, or intended so to be, with all the buildings thereon and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatever. If to such covenant there be added "free from all encumbrances," these words shall have as much effect as the words "and that freely and absolutely acquitted, exonerated, and forever discharged, or otherwise, by the said grantor or his heirs saved harmless and indemnified of, from, and against, any and every charge and encumbrance whatever." *Ibid.*, § 2450.

A covenant by any such grantor "that he will execute such further assurances of the said lands as may be requisite" shall have the same effect as if he covenanted that he, the grantor, his heirs, or personal representative, will at any time, upon any reasonable request, at the charge of the grantee, his heirs, or assigns, do, execute, or cause to be done or executed, all such further acts, deeds, and things, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises, hereby conveyed or intended so to be, unto the grantee, his heirs, and assigns in manner aforesaid, as by the grantee, his heirs, or assigns, his or their counsel in the law, shall be reasonably devised, advised, or required. *Ibid.*, § 2451.

A covenant by any such grantor "that he has done no act to encumber the said lands" shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered, any act, deed, or thing whereby the lands and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or otherwise. *Ibid.*, § 2452.

Every contract, not in writing, made in respect to real estate or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, shall be void, both at law and in equity, as to purchasers for valuable consideration without notice and creditors. *Ibid.*, § 2463.

Any such contract, if in writing, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract was a deed conveying the estate or interest embraced in the contract. *Ibid.*, § 2464.

Every such contract in writing and every deed conveying any such estate or term, and every deed of gift, or deed of trust, or mortgage conveying real estate, shall be void as to subsequent purchasers for valuable consideration without notice, and creditors, until and except from the time that it is duly admitted to record in the county or corporation wherein the property embraced in such contract or deed may be. The possession of any such estate or term, without notice of other evidence of title, shall not be notice to said subsequent purchasers for valuable consideration. *Ibid.*, § 2465.

Notwithstanding any such writing shall be duly admitted to record in one county or corporation wherein there is real estate, it shall nevertheless be void as to such creditors and purchasers in respect to other real estate without the same, until it is duly admitted to record in the county or corporation wherein such other real estate may be. *Ibid.*, § 2466.

When two or more writings embracing the same property are admitted to record in the same county or corporation on the same day, if the previous sections do not provide for the case, that which was first admitted to record shall have priority in respect to the property in such county or corporation. *Ibid.*, § 2469.

The provisions of this and any other chapter of this Code or of any subsequent statute, by virtue of which a writing is to be or may be recorded in the county or corporation wherein the property embraced in such writing is, shall be construed, in respect to the county, as relating only to property within the said county and without the corporate limits of the corporation having a court wherein writings may be lawfully admitted to record, and, in respect to the corporation, as relating only to property within the corporate limits of said corporation having such a court. *Ibid.*, § 2470.

The words "creditors" and "purchasers," where used in any previous section of this chapter, shall not be restricted to the protection of creditors of and purchasers from the grantor, but shall extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to the property conveyed, or a right to subject it to their debts. And as against any person claiming under a deed or other writing which shall not have been admitted to record before payment by a subsequent purchaser for valuable consideration of the whole or a part of his purchase money, such subsequent purchaser, notwithstanding such deed or other writing be admitted to record before he becomes a complete purchaser, shall, in equity, have a lien on the property purchased by him, for so much of his purchase money as he may have paid before notice. *Ibid.*, § 2472.

A power of attorney may be admitted to record in any county or corporation. *Ibid.*, § 2499.

WASHINGTON.

All conveyances of real estate or of any interest therein, and all contracts creating or evidencing any encumbrance upon real estate shall be by deed. Remington & Ballinger's Annotated Codes and Statutes of 1909, § 8745.

A deed shall be in writing, signed by the party bound thereby. *Ibid.*, § 8746.

Warranty deeds for the conveyance of land may be substantially in the following form:

1040. Warranty Deed, Statutory Form.

The grantor [*here insert the name or names and place of residence*], for and in consideration of [*here insert consideration*], in hand paid, convey and warrant to [*here insert the grantee's name or names*] the following described real estate [*here insert description*], situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19 _____.

[SEAL.]

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantee:—

1. That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple in and to the premises therein described, and had good right and full power to convey the same;

2. That the same were then free from all encumbrances;

3. That he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. *Ibid.*, § 8747.

Bargain and sale deeds for the conveyance of land may be substantially in the following form:—

1041. Bargain and Sale Deed, Statutory Form.

The grantor [*here insert name or names and place of residence*], for [and] in consideration of [*here insert consideration*], in hand paid, bargain, sell and convey to [*here insert the grantee's name or names*] the following described real estate [*here insert description*], situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19 ____.

[SEAL]

Every deed in substance in the above form shall convey to the grantee, his heirs or other legal representatives, an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or other legal representatives, to wit, that any grantor was seized of an indefeasible estate in fee simple, free from encumbrance, done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators, and assigns, may, in any action, recover for breaches, as if such covenants were expressly inserted. *Ibid.*, § 8748.

Quitclaim deeds may be in substance in the following form:

1042. Quitclaim Deed, Statutory Form.

The grantor [*here insert name or names and place of residence*], for the consideration [*here insert consideration*], convey and quitclaim to [*here insert grantee's name or names*] all interest in the following described real estate [*here insert description*], situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19 ____.

[SEAL]

Every deed in substance in form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release, and quitclaim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to the after-acquired title unless words are added expressing such intention. *Ibid.*, § 8749.

The term "heirs," or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. *Ibid.*, § 8753.

Whenever any person, married or single, having in his or her name the legal title of record to any real estate, shall sell or dispose of the same to an actual bona fide purchaser, a deed of such real estate from the person holding such legal record title to such actual bona fide purchaser shall be sufficient to convey to and vest in such purchaser the full legal and equitable title to such real estate free and clear of any and all claims of any and all persons whatsoever not appearing of record in the auditor's office of the county in which such real estate is situated. *Ibid.*, § 8771.

All deeds, mortgages, and assignments of mortgages, shall be recorded in the office of the county auditor of the county where the land is situated, and shall be valid as against bona fide purchasers from the date of their filing for record in said office; and when so filed shall be notice to all the world. *Ibid.*, § 8781.

The county auditor must, upon the payment of his fees for the same, record deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, powers of attorney to convey real estate, and leases. *Ibid.*, § 8786.

When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the county auditor's office for record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, in the order and as of the time when the same was received for record. *Ibid.*, § 8790.

Whenever any deed, conveyance, bond, mortgage, or other writing shall have been recorded or filed in pursuance of law, certified copies of record of such deed, conveyance, bond, or other writing, shall be received in evidence to all intents and purposes as the originals themselves. *Ibid.*, § 1260.

Every conveyance of lands, or transfers of other property, made in any manner for the use of a county, shall have the same force and effect as if made to said county in its proper and corporate name. *Ibid.*, § 3825.

The several superior courts may, whenever it is necessary, appoint a commissioner to convey real estate,—

1. When, by a judgment in an action, a party is ordered to convey real property to another, or any interest therein;

2. When real property, or any interest therein, has been sold under a special order of the court, and the purchase money paid therefor. *Ibid.*, § 605.

The deed of the commissioner shall so refer to the judgment authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally. *Ibid.*, § 606.

A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land. *Ibid.*, § 607.

A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding. *Ibid.*, § 608.

A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be indorsed on the conveyance, and recorded with it. *Ibid.*, § 609.

It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance. *Ibid.*, § 610.

The conveyance shall be recorded in the office in which by law it should have been recorded had it been made by the parties whose title is conveyed by it. *Ibid.*, § 611.

In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment, or sequestration, or appoint a commissioner to make the conveyance. *Ibid.*, § 612.

If any person, who is bound by contract, in writing, to convey any real property, shall die before making the conveyance, the superior court of the county in which such real estate or any portion thereof is situate may make a decree authorizing and directing his executor or administrator to convey such real property to the person entitled thereto. *Ibid.*, § 1610.

A conveyance executed under the provisions of this chapter (§§ 1610-1620) shall so refer to the decree authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of a decree shall pass to the grantee all the estate, right, title, and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract. *Ibid.*, § 1616.

Any party interested may appeal therefrom to the supreme court, in the same manner as appeals are taken and prosecuted from final decrees or judgments in equity causes; but if no appeal be taken from such decree within the time limited therefor, or if such decree be affirmed on appeal,

it shall be the duty of the executor, administrator, or commissioner to execute and deliver the conveyance according to the directions contained in the decree; and a certified copy of the decree shall be recorded with the deed in the office of the auditor of the county where the lands lie, and shall be conclusive evidence of the correctness of the proceedings and of the authority of the executor, administrator, or commissioner to make such conveyance. *Ibid.*, § 1617.

If the deceased died out of the state, and was not an inhabitant thereof at the time of his death, and no executor or administrator shall have been appointed in the state, such conveyance shall be executed by a commissioner to be appointed by the court, in the decree, for that purpose. *Ibid.*, § 1615.

A copy of the decree for conveyance, made by the court, and duly certified, and recorded in the office of the auditor of the county wherein the land is situate, shall, after affirmation upon appeal, or after expiration of the time for taking an appeal in case no appeal be taken, give to the person entitled to the conveyance a right to the immediate possession of the land contracted for, and of holding the same according to the terms of the intended conveyance, in like manner and with like effect as if they had been conveyed in pursuance of the decree. *Ibid.*, § 1618.

If the person to whom the conveyance was to be made shall die before the commencement of the proceedings according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the persons who would have been entitled to it, or in the executor or administrator for their benefit. *Ibid.*, § 1619.

If real property sold for unpaid assessments in an irrigation district is not redeemed within twelve months from sale the secretary, or his successor in office, must make to the purchaser, or his assignee, a deed to the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. *Ibid.*, § 6444.

After receiving the amount of assessments and costs, the secretary must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the secretary and one copy delivered to the purchaser, and the other filed in the office of the county clerk of the county in which the land is situated. *Ibid.*, § 6442.

The matter recited in the certificate of sale must be recited in the deed. The deed conveys to the grantee the absolute title to the lands described therein, free from all incumbrances, except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession. *Ibid.*, § 6445.

The party to whom a sheriff's deed of property sold on execution is given shall, upon receipt thereof, take the same to the clerk of the superior court, who shall enter in his book of levies, where the levy is recorded, the sale of real estate therein conveyed, and shall indorse the fact upon the deed, with the date when presented to him and when made. And no county auditor shall record any such deed without such indorsement. *Ibid.*, § 604.

The right to the use of water acquired by appropriation may be transferred, like other property, by deed. The county auditor of each county in this state must keep a book in which he must record the notices provided for in this chapter. *Ibid.*, § 6321.

Upon a sale of real property under a judgment foreclosing tax liens and ordering a sale of the property, the county treasurer shall execute to the

purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns the title to the property therein described, and shall be substantially in the following form:

1043. Tax Deed, Statutory Form.

STATE OF WASHINGTON, }
County of , } ss.

THIS INDENTURE, made this day of , between , as treasurer of county, state of Washington, party of the first part, and , party of the second part:

WITNESSETH, That whereas, at a public sale of real estate held on the day of , , pursuant to a real estate tax judgment entered in the superior court in the county of on the day of , , in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, duly purchased in compliance with the laws of the state of Washington, the following described real estate, to wit: [*here place description of real estate conveyed*] and that said has complied with the laws of the state of Washington necessary to entitle (him, her or them) to a deed for said real estate.

NOW, THEREFORE, know ye, that I, , county treasurer of said county of , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto , his heirs and assigns, forever, the said real estate hereinbefore described.

GIVEN under my hand and seal of office this day of , A. D. .

County Treasurer.

Ibid., § 9260.

Deeds executed by the county treasurer, as aforesaid, shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the real estate thereby conveyed of the following facts:

First: That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law;

Second: That the taxes or assessments were not paid at any time before the issuance of deed;

Third: That the real estate conveyed had not been redeemed from the sale at the date of the deed;

Fourth: That the real estate was sold for taxes, assessments, penalties and costs, as stated in the deed.

Fifth: That the grantee in the deed was the purchaser, or assignee of the purchaser;

Sixth: That the sale was conducted in the manner required by law.

And any judgment for the deed to real estate sold for delinquent taxes, except as otherwise provided in this section, shall estop all parties from raising any objections thereto; or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or assessments have been paid, or the real estate was not liable to the tax or assessment. Ibid., § 9267.

Real property acquired by the several counties of the state of Washington for taxes shall be subject to sale by order of the board of county commissioners of the several counties of this state at any time after the counties shall have received a deed therefor, when in the judgment of the board of county commissioners they deem it for the best interests of the county to sell the same, and when the board of county commissioners desires to sell any property so acquired, they shall enter an order upon their records directing the county treasurer to sell such portions of such property as they may determine to sell from time to time. *Ibid.*, § 9272.

The county treasurer shall issue a deed in the following form for all lots or parcels of real estate sold under the provisions of the act:

1044. Tax Deed, Statutory Form.

STATE OF WASHINGTON, }
County of , } ss.

THIS INDENTURE, made this day of , 19 , between as treasurer of county, state of Washington, the party of the first part, and , party of the second part;

WITNESSETH, That whereas, at a public sale of real estate, held on the day of , A. D. 19 , pursuant to an order of the board of county commissioners of the county of , state of Washington, duly made and entered, and after having first given due notice of the time, and place and terms of said sale, and, whereas, in pursuance of said order of the said board of county commissioners, and of the laws of the state of Washington, and for and in consideration of the sum of dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to the following described real estate, and which said real estate is the property of county, and which is particularly described as follows, to wit: , the said being the highest and best bidder at said sale, and the said sum being the highest and best sum bid at said sale:

NOW, THEREFORE, know ye that I, , county treasurer of said county of , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant and convey unto , heirs and assigns, forever, the said real estate hereinbefore described, as fully and completely as the said party of the first part can by virtue of the premises convey the same.

GIVEN under my hand and seal of office this day of , A. D. 19 .

County Treasurer,
By , Deputy.

Ibid., § 9273.

1045. Warranty Deed.

THIS INDENTURE, made this day of , A. D. 19 , between , part of the first part, and , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars of the United States of America to in hand paid by the said part of the second part, do by these presents, grant, bargain, sell, convey and confirm unto the said part of the second part, heirs, executors, administrators and assigns, the following real

estate, lying and being in the county of _____, state of Washington, described as follows, to-wit: [description] With all and singular the hereditaments and appurtenances to the same belonging or appertaining, the reversion or reversions, the remainder or remainders, rents, issues and profits thereof.

To HAVE AND TO HOLD the above granted premises unto the said part of the second part, _____ heirs, executors, administrators and assigns forever, with all the privileges and appurtenances thereto belonging.

And the said part of the first part do covenant for _____ and _____ heirs, executors, administrators and assigns to and with the said part of the second part, _____ heirs, executors, administrators and assigns, as follows:

1st. That the said part of the first part _____ seized of the said premises in fee simple, and ha _____ good right to convey the same.

2d. That the said part of the second part shall quietly enjoy the said premises.

3d. That the said premises are free from all incumbrances.

4th. That the said part of the first part will warrant and defend the title to the same forever against all lawful claims and demands whatsoever.

IN WITNESS WHEREOF, the said part of the first part ha _____ hereunto set hand and seal the day and year first above written.

Signed and sealed in the presence of

[Signatures.]

[Signatures and seals.]

WEST VIRGINIA.

No estate of inheritance or freehold, or for a term of more than five years, in lands, shall be conveyed, unless by deed or will. Code of 1906, § 3020.

An immediate estate or interest in, or the benefit of a condition respecting any estate, may be taken by a person under an instrument, although he be not a party thereto; and if a covenant or promise be made for the sole benefit of a person with whom it is not made, or with whom it is made jointly with others, such person may maintain, in his own name, any action thereon which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise. *Ibid.*, § 3021.

If in a deed made by one as attorney in fact for another, the words of conveyance or the signature be in the name of the attorney, it shall be as much the principal's deed as if the words of conveyance or the signature were in the name of the principal by the attorney, if it be manifest on the face of the deed that it should be construed to be that of the principal to give effect to its intent. *Ibid.*, § 3022.

A writing which purports to pass or assure a greater right or interest in real estate than the person making it may lawfully pass or assure, shall operate as an alienation of such right or interest in the said real estate as such person might lawfully convey or assure. And when the deed of the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything descends from him, his heirs shall be barred for the value of what is so descended or liable for its value. *Ibid.*, § 3026.

When any real estate is conveyed or granted to any person without any words of limitation, such conveyance or grant shall be construed to pass the fee simple or the whole estate or interest which the grantor had power to dispose of in such real estate, unless a contrary intention shall appear by the conveyance or grant. *Ibid.*, § 3027.

Every estate in lands so limited that, as the law was on October 7th, 1776, in the state of Virginia, such estate would have been an estate tail, shall be deemed an estate in fee simple. *Ibid.*, § 3028.

Where any estate, real or personal, is given by deed to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for life only in such person and a remainder in fee simple in his heirs or the heirs of his body. *Ibid.*, § 3030.

By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to the use, or deed operating by way of covenant to stand seized to the use, the possession of the bargainor, releasor or covenantor shall be deemed transferred to the bargainee, releasee or person entitled to the use, for the estate or interest which such person has in the use, as perfectly as if the bargainee, releasee or person entitled to the use, had been enfeoffed with livery of seizin of the land intended to be conveyed by such deed or covenant. *Ibid.*, § 3033.

Every deed of release of any estate or interest capable of passing by deeds of lease or release, shall be as effectual for the purposes therein expressed, without the execution of a lease, as if the same had been executed. *Ibid.*, § 3034.

A deed may be made in the following form, or to the same effect:

1046. Deed, Statutory Form.

"THIS DEED, made the day of , in the year , between [*here insert names of parties*], WITNESSETH: That in consideration of [*here state the consideration*], the said doth (or do) grant unto the said all, etc. [*here describe the property, and insert covenants or any other provisions*].

WITNESS the following signature and seal (or signatures and seals)."

Ibid., § 3048.

Every such deed, conveying lands, shall, unless an exception be made therein, be construed to include all the estate, right, title, and interest whatever, both at law and in equity, of the grantor, in or to such lands. *Ibid.*, § 3049.

Whenever, in any deed, there shall be used the words, "The said grantor (or the said) releases to the said grantee (or the said) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (or releasor) hath remised, released, and forever quitted claim, and by these presents doth remise, release, and forever quit claim unto the grantee (or releasee) his heirs and assigns, all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or released) or intended so to be, so that neither he nor his personal representative, his heirs or assigns, shall, at any time thereafter have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. *Ibid.*, § 3050.

A deed of trust to secure debts or indemnify sureties, may be in the following form or to the same effect:

1047. Deed of Trust, Statutory Form.

THIS DEED, made the day of , in the year , between (the grantor) of the one part, and , (the trustee) of the other part, WITNESSETH: That the said (the grantor) doth (or do) grant unto the said (the trustee) the following property [*here describe it*]. In trust to secure [*here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the party may agree upon*].

WITNESS the following signatures and seals [or signature and seal].

Ibid., § 3052.

The trustee in any such deed shall, whenever required by any creditor secured or any surety indemnified by the deed, or the personal representative of any such creditor or surety, after the debt due to such creditor or for which such surety may be liable, shall have become payable and default shall have been made in the payment thereof, or any part thereof, by the grantor, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction. *Ibid.*, § 3053.

Every deed for real estate sold under a deed of trust may be made in the following form, or to the same effect:

1048. Deed under Deed of Trust, Statutory Form.

"THIS DEED, made the day of , between A B , trustee, of the first part, and C D , of the second part.

WHEREAS, The said trustee, by virtue of the authority vested in him by the deed of trust hereinafter mentioned (or by an order of the circuit court of the county of , made on the day of , as the case may be) did sell, as required by law, a certain tract (or lot, as the case may be) of land, situate in the county (or city, town or village, as the case may be) of , conveyed by E F to the said A B , trustee (or to G H , trustee, as the case may be) by deed bearing date the day of , and recorded (if it be recorded) in deed book , on page , in the office of the clerk of the county court of the county of , and bounded and described therein as follows: [*here insert the description and quantity as set forth in the deed of trust, and any further description deemed necessary.*]

AND WHEREAS, at such sale the said C D purchased the said property for the sum of dollars.

Now, THEREFORE, this deed WITNESSETH: That the said A B , trustee as aforesaid, doth grant unto the said C D , the said real estate hereinbefore described.

WITNESS the following signature and seal.

A B , *Trustee*, [L. s.]"

Ibid., § 3057.

The deed of a sheriff or special commissioner for real estate sold under the decree, judgment or order of a court, may be made in the following form, or to the same effect:

1049. Deed by Sheriff or Special Commissioner, Statutory Form.

"THIS DEED, made this day of , between A B , sheriff of the county of (or special commissioner, as the case may be) of the first part, and C D , of the second part:

WHEREAS, the said sheriff (or commissioner) in pursuance of the authority vested in him by a decree (judgment or order, as the case may be) of the circuit court of the county of , made on the day of , in a suit in chancery (or an action at law, or otherwise, as the case may be) therein pending, in which E F was plaintiff, and G H was defendant, did sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree (judgment or order)

at which sale the said C D , became the purchaser for the sum of dollars.

AND WHEREAS, the said court by a subsequent decree (or order) made in the case on the day of , confirmed the said sale and directed a deed for the said real estate to be made to the said C D , by the said sheriff (or commissioner).

NOW, THEREFORE, THIS DEED WITNESSETH: That the said A B , sheriff (or special commissioner) as aforesaid, doth grant unto the said C D , a certain parcel of real estate situate in the county of , and bounded and described as follows [*here insert the boundaries, description and quantity, as near as may be*].

WITNESS the following signature and seal.

A B , Sheriff (or Special Commissioner), [L.S.]”

Ibid., § 3058.

Any deed, or part of a deed, which shall fail to conform to the provisions of this chapter (§§ 3048-3073), shall nevertheless be as valid and effectual, and shall bind the parties thereto, as far as the rules of law and equity will permit, as if it had so conformed. Ibid., § 3060.

When a deed uses the words, “the said covenants,” such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives and assigns. Ibid., § 3061.

A covenant by the grantor in a deed, “that he will warrant generally the property hereby conveyed,” shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever. Ibid., § 3062.

A covenant by any such grantor “that he will warrant specially the property hereby conveyed,” shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid., § 3063.

The words, “with general warranty,” in the granting part of any deed, shall be deemed to be a covenant by the grantor “that he will warrant generally the property hereby conveyed.” The words “with special warranty” in the granting part of any deed shall be deemed to be a covenant by the grantor “that he will warrant specially the property hereby conveyed.” Ibid., § 3064.

A covenant by the grantor in a deed for land, “that he has the right to convey the said land to the grantee,” shall have the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority to convey the said land, with all the buildings thereon, and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed, or intended so to be by the deed, and according to its true intent. Ibid., § 3065.

A covenant by any such grantor “that the grantee shall have quiet possession of the said land,” shall have as much effect as if he covenanted that the grantee, his heirs and assigns, might at any and all times thereafter, peaceably and quietly enter upon, and have, hold and enjoy, the land conveyed by the deed, or intended so to be, with all the buildings thereon, and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit without any eviction, interruption, suit, claim or demand whatever. If to such cove-

nant there be added, "free from all incumbrances," these words shall have as much effect as the words, "and that freely and absolutely acquitted, exonerated, and forever discharged, or otherwise by the said grantor or his heirs saved harmless and indemnified of, from, and against any and every charge and incumbrance whatever." *Ibid.*, § 3066.

A covenant by any such grantor "that he will execute such further assurances of the said lands as may be requisite," shall have the same effect as if he covenanted that he, the grantor, his heirs or personal representatives, will, at any time, upon any reasonable request at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done or executed, all such further acts, deeds and things, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, unto the grantee, his heirs and assigns aforesaid, as by the grantee, his heirs or assigns, his or their counsel in the law, shall be reasonably devised, advised, or required. *Ibid.*, § 3067.

A covenant by any such grantor, "that he has done no act to encumber the said lands," shall have the same effect as if he covenanted that he has not done or executed, or knowingly suffered to be done, or executed; any act, deed or thing whereby the lands and premises conveyed or intended so to be, or any part thereof, are, or will be discharged, affected, or incumbered in title, estate or otherwise. *Ibid.*, § 3068.

A power of attorney may be admitted to record in any county. *Ibid.*, § 3074.

The clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be recorded, shall admit the same to record in his office as to any person whose name is signed thereto. *Ibid.*, § 3075.

Any contract in writing, made in respect to real estate, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract was a deed conveying the estate or interest embraced in the contract. *Ibid.*, § 3102.

Every such contract, every deed conveying any such estate or term, and every deed of gift, or deed of trust or mortgage, conveying real estate, shall be void as to creditors and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract or deed may be. *Ibid.*, § 3103.

Notwithstanding any such writing shall be duly admitted to record in one county wherein there is real estate, it shall nevertheless be void as to such creditors and purchasers in respect to other real estate without the same, until it is duly admitted to record in the county wherein such other real estate may be. *Ibid.*, § 3104.

Where two or more writings embracing the same property, are admitted to record in the same county on the same day, if the previous sections do not provide for the case, that which was first admitted to record shall have priority in respect to the property in such county. *Ibid.*, § 3106.

The words "creditors" and "purchasers," where used in any previous section of this chapter (§§ 3099-3107), shall not be restricted to the protection of creditors of, and purchasers from, the grantor, but shall extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to the property conveyed, or a right to subject it to their debts. *Ibid.*, § 3107.

A purchaser shall not, under this chapter, be affected by the record of a deed or contract made by a person under whom his title is not derived, nor by the record of a deed or contract made by any person before the date of a deed or contract made to or with such person, which is duly admitted to record, and from which the title of such person is derived. *Ibid.*, § 3108.

The deed of real estate sold for taxes may be in form or effect as follows:

1050. Tax Deed, Statutory Form.

THIS DEED, made this day of , nineteen , by , clerk of the county court of the county of , West Virginia, (or by , a commissioner appointed by the circuit court of the county of , West Virginia, or by , a commissioner appointed by the judge of the circuit court of the county of , West Virginia, in vacation, as the case may be) of the first part and of the second part,

WHEREAS, In pursuance of the statutes in such case made and provided, , sheriff (or , deputy of , sheriff, or , collector, or , deputy of , collector, as the case may be) of the said county, did in the month of , in the year nineteen , commence the sale of the real estate charged with taxes in said county, and returned delinquent therein for the non-payment of the taxes so charged thereon; and

WHEREAS, At said sale so commenced, continued and completed according to law, the said (or one , if the grantee in the deed be not the purchaser), became the purchaser of a tract of land (or acres, part of a tract of land, or the one undivided part of a tract of land, as the case may be) charged with taxes in the said county as a tract (or part of a tract, as the case may be) of acres, in the name of , for the year (or years, as the case may be) eighteen ; for the sum of \$, that being the taxes, interest and commissions due thereon at the date of such sale, and the costs of publication, and the fee for the receipt for the purchase money; and

WHEREAS, More than one year has elapsed since the time of the said sale and purchase, as appears by the sheriff's (or collector's) receipt for the purchase money, and the said real estate not having been redeemed as provided by law; and

WHEREAS, After the expiration of the said one year, to-wit: On the day of , nineteen , the said caused a survey and plat and description of the real estate so purchased to be made and filed with the clerk of the county court (or caused a report to be made to the clerk of the county court, specifying the metes and bounds of the real estate so purchased, and giving a description thereof sufficient to identify the same, as the case may be) as required by law. (If the purchaser has assigned his purchase by such writing as is hereinbefore stated, or joins in the deed to his assignee, or has died, and the grantee in the deed be the assignee of the purchaser, or his heir (or heirs) at law or devisee, [*here recite the facts showing why the deed is not made to the purchaser, and the fact that the purchaser joins in the deed, if he does so.*]

Now, THEREFORE, this indenture witnesseth that the party (or parties, if the purchaser, his heirs or devisees join in the deed) of the first part, for and in consideration of the premises and in pursuance of the statute in such case made and provided, has (or have) granted, bargained and sold, and by these presents doth (or do) grant, bargain, sell and convey to the party of the second part, his heirs and assigns forever, all the real estate so purchased as aforesaid, situate in the county (or counties, if it be situated in more than one county) of , bounded and described as follows, to-wit: Beginning at [*here give the boundaries and description of the real estate*

purchased substantially as shown by the survey and plat, or report herein-before mentioned] containing _____ acres, be the same more or less. To have and to hold the said real estate, with its premises and appurtenances, unto the said _____, his heirs and assigns forever.

WITNESS the following signature and seal (or signatures and seals):
 _____,
 _____, *Clerk of the County Court.* [SEAL.]
 or _____, *Commissioner.* [SEAL.]

If the purchase was of a city, town or village lot, or a part thereof, or an undivided interest therein, the above form must be varied according to the facts. *Ibid.*, § 877.

Where the clerk of the county court is himself the purchaser, the deed for the land purchased by him shall be executed by the clerk of the circuit court; and where the clerk of the county and circuit court is the same person, the deed shall be made to him by a commissioner appointed by the circuit court of the county, or the judge thereof in vacation, for the purpose. *Ibid.*, § 880.

If the clerk of the county court fail or refuse to make the deed provided for in section 877 when lawfully required to do so, or if he execute an insufficient deed and fail or refuse thereafter to execute a good and sufficient deed to the person entitled thereto, when called on to do so, the person entitled to such deed may apply by petition to the circuit court of the county in which the real estate was sold, or to the judge thereof, in vacation, to compel the making thereof by such clerk, or for the appointment of a commissioner to make the same. But of every such application ten days previous notice in writing must be given to such clerk. If upon the hearing of such application, the court or judge be of the opinion that the applicant is not entitled to such deed, the petition shall be dismissed at his costs; but if the court or judge be of the opinion that he is entitled to such deed, an order shall be made by such court or judge directing the same to be made by such clerk, or a commissioner may be appointed for the purpose, as the court or judge shall determine. The order, if made in vacation, shall be filed with the clerk of the court and entered by him in the chancery order book thereof. *Ibid.*, § 881.

A court of law or equity, in a suit in which it is proper to decree or order the execution of any deed or writing, may appoint a commissioner to execute the same; and the execution thereof shall be as valid to pass, release, or extinguish the right, title, and interest of the party on whose behalf it is executed, as if such party had been at the time capable at law of executing the same and had executed it. *Ibid.*, § 3999.

1051. Warranty Deed.

THIS DEED, made the _____ day of _____, 19____, between _____, of _____ county, and state of _____, of the first part, and _____, of _____ county, and state of _____, of the second part,

WITNESSETH, that in consideration of the sum of _____, do grant unto the said _____, the following described real estate, situated, lying and being in the county of [description].

The said _____ covenant to and with the said _____, that he ha the right to convey the said land to the grantee _____, and that he will warrant the property hereby conveyed _____.

WITNESS the following signature and seal

[Signatures and seals.]

WISCONSIN.

Conveyances of land or any estate or interest therein may be made by deed signed by the person from whom the estate or interest is intended to pass, or by his lawful agent or attorney. Statutes of 1898, § 2203, as amended by chap. 45 of 1905, p. 1068 of Statutes Supplement 1899-1905.

Whenever any person, holding a contract for the conveyance of land, as purchaser thereof, shall die before the execution of a deed of such lands by him, and such deceased person shall have been entitled to receive such deed prior to his death, or full payment therefor shall be made by his widow or any heir of such deceased, it shall be lawful for the vendor of said land to execute a deed naming such deceased person as grantee therein, and to deliver said conveyance to the widow, or any heir of said deceased, and the execution and delivery thereof shall pass the title to the heirs or devisees, subject to the rights of the widow, if any, in the same manner and with the same interest or estate which they would have received, had the deed been made prior to the death of the deceased and subject to all claims, liens or equities, which might exist had the title passed by descent or devise. Statutes Supplement 1899-1905, pp. 1071, 1072, chap. 6 of 1899, § 2226-a of Statutes Supplement.

All judgments, decrees and orders rendered or made by any court in cases where the title to land shall have been in controversy, or operating to pass title thereto or otherwise affect the title, may be recorded in the office of the register of deeds of every county where any part of the lands are situate, in the same manner and with like effect as conveyances. Such recording may be done from a duly certified copy thereof. Statutes of 1898, § 2236, as amended by § 31, chap. 351, of 1899, p. 1072 of Statutes Supplement 1899-1905.

No covenants shall be implied in any conveyance of real estate whether such conveyance contain special covenants or not. Statutes of 1898, § 2204.

No grant of land shall be void for the reason that at the time of delivery thereof such lands shall be in actual possession of a person claiming under title adverse to the grantor. *Ibid.*, § 2205.

In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every grant of lands or any interest therein shall pass all the estate or interest of the grantor unless the intent to pass a less estate or interest shall appear by express terms or be necessarily implied in the terms of such grant. *Ibid.*, § 2206.

A deed of quitclaim and release of the form in common use or of the form hereinafter provided shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. *Ibid.*, § 2207.

Conveyances of land may be in substantially the following form:

1052. Warranty Deed, Statutory Form.

A. B., grantor, of county, Wisconsin, hereby conveys and warrants to C. D., grantee, of county, Wisconsin, for the sum of dollars, the following tract of land in county [*here describe the premises*].

WITNESS the hand and seal of said grantor, this day of , 19 .

In the presence of

[SEAL.]

1053. Quitclaim Deed, Statutory Form.

A. B., grantor, of county, Wisconsin, hereby quitclaims to C. D., grantee, of county, Wisconsin, for the sum of dollars, the following tract of land in county [*here describe the premises*].

WITNESS the hand and seal of said grantee, this day of , 19 .

In the presence of

, [SEAL.]

, [SEAL.]

Such deeds, when executed as required by law, shall, when of the first of the above forms, have the effect of a conveyance in fee-simple to the grantee, his heirs and assigns of the premises therein named together with all the appurtenances, rights and privileges thereto belonging, with a covenant from the grantor, his heirs and personal representatives that he is lawfully seized of the premises; has good right to convey the same; that he guarantees the grantee, his heirs and assigns in the quiet possession thereof; that the same are free from all incumbrance and that the grantee, his heirs and personal representatives will forever warrant and defend the title and possession thereof in the grantee, his heirs and assigns against all lawful claims whatsoever; any exceptions to such covenants may be briefly inserted in such deed, following the description of the land; and when in the second of the above forms, shall have the effect of a conveyance in fee-simple to the grantee, his heirs and assigns of all right, title, interest and estate of the grantor, either in possession or expectancy, in and to the premises therein described and all rights, privileges and appurtenances thereto belonging. *Ibid.*, § 2208.

Deeds of sheriffs upon sale on execution may be in substantially the following form:

1054. Deed by Sheriff on Execution, Statutory Form.

WHEREAS, a judgment in favor of A. B., and against C. D., was docketed in the circuit court of county, Wisconsin, on the day of 19 , and E. F., sheriff [or, G. H., then sheriff] of said county, in pursuance of an execution upon said judgment against the property of said C. D., said execution being dated the day of , 19 , levied upon the lands hereinafter described, and proceeded according to law to advertise and sell the same to satisfy the damages and costs mentioned in the execution, and did, on the day of , 19 , sell the said lands to L. M., for dollars, said L. M. being the best bidder therefor, and thereupon made out duplicate certificates of said sale in the form required by law and filed one of said certificates in the office of the register of deeds of the county of within ten days after said sale, and delivered the other to the purchaser,

AND WHEREAS, months having expired since said sale, and said premises remain unredeemed, and no creditor of the said C. D. has acquired the right of said purchaser [or, and J. K., a creditor of said C. D., has acquired the rights of the purchaser by redemption, *as the case may be*];

NOW, THEREFORE, the said E. F., sheriff aforesaid, in consideration of the premises, and of said sum of dollars to him (or to his predecessor) paid by the said L. M., hereby conveys to the said L. M. (or, if a creditor shall have acquired the right of said L. M., then to said creditor by name), the following tract of land in county, Wisconsin [*describe premises*], with all the interest which said C. D. had therein on the day of , 19 , or has since acquired.

WITNESS the hand and seal of said sheriff, this day of 19 .

In presence of

, [SEAL.]
 Sheriff County, Wisconsin.

Ibid., § 2211.

Deeds of sheriffs or referees on foreclosure of mortgage shall be sufficient if made in substantially the following form:

1055. Deed on Foreclosure Sale by Sheriff or Referee, Statutory Form.

WHEREAS, a judgment of foreclosure and sale was rendered in the court of county, Wisconsin, on the day of , 19 , in a certain action wherein A. B. was plaintiff, and C. D. defendant, and in pursuance thereof, after due advertisement, the mortgaged premises hereinafter described were sold on the day of , 19 , to E. F., for the sum of dollars, he being the best bidder therefor:

AND WHEREAS, the said E. F. (or, G. H., assignee of said E. F.) is now entitled to a conveyance thereof according to law;

NOW, THEREFORE, the undersigned J. K., sheriff (or referee), in consideration of the premises, and of the sum of dollars, paid by the said E. F., hereby conveys to said E. F. the following tract of land in county, Wisconsin [*description of land*].

WITNESS the hand and seal of said sheriff, this day of 19 .

In presence of

’
.

, [SEAL.]
Sheriff County, Wisconsin.

Deeds of sheriffs on foreclosure of mortgage by advertisement under chapter 152 of these statutes shall be sufficient if made substantially in the following form:

1056. Deed by Sheriff on Foreclosure of Mortgage by Advertisement, Statutory Form.

WHEREAS, a certain mortgage executed by of , and recorded in the office of the register of deeds of county, Wisconsin, in volume , of mortgages, at page , and foreclosed under and by virtue of chapter 152, revised statutes of Wisconsin, and in pursuance thereof, after due advertisement, the mortgaged premises hereinafter described were sold on the day of , 19 , to E. F., of , for the sum of dollars, he being the best bidder therefor;

AND WHEREAS, the said E. F. (or, G. H., the assignee of said E. F.) is now entitled to a conveyance thereof, according to law:

NOW, THEREFORE, the undersigned J. K., sheriff, in consideration of the premises, and of the said sum of dollars, paid by the said E. F., hereby conveys to said E. F. the following tract of land in county, Wisconsin [*description of land*].

WITNESS the hand and seal of said sheriff, this day of , .

In presence of

[SEAL.]
Sheriff of county, Wisconsin.

Ibid., § 2212.

A guardian's deed may be in the following form:

1057. Deed by General Guardian, Statutory Form.

WHEREAS, by a license made by the county court of _____ county, Wisconsin, on the _____ day of _____, 19____, A. B., guardian of C. D., minor child of J. D., late of _____, deceased, was authorized to sell the interest of the said C. D. in the lands hereinafter described; and whereas, the said A. B., having first taken the oath, and given the bond required by law, did, after due advertisement, sell, on the _____ day of _____, said land to E. F., of _____ county, Wisconsin, for the sum of _____ dollars, he being the best bidder therefor; and whereas, such proceedings were confirmed by an order of said county court, on the _____ day of _____, and this conveyance directed:

Now, THEREFORE, the said A. B., in his capacity as guardian as aforesaid, in consideration of the premises, and of the said sum of _____ dollars paid by said E. F., hereby conveys to the said E. F. the following tract of land in _____ county, Wisconsin [*description of land*].

WITNESS the hand and seal of said A. B., guardian as aforesaid, this day of _____, 19____.

In presence of

A. B., [SEAL.]
Guardian of C. D., minor child of J. D., deceased.

A deed by a special guardian authorized by the circuit court or circuit judge to convey real estate of any infant may be in substantially the following form:

1058. Deed by Special Guardian, Statutory Form.

WHEREAS, on application in the circuit court of _____ county, Wisconsin, to sell all the rights, title, and interest of _____, infant, in and to the real estate hereinafter described, such proceedings were had that the undersigned was, on the _____ day of _____, 19____, appointed the special guardian of said infant in relation to the proceedings to be had upon such application, and gave and filed a duly approved bond to said infant, as required, and such proceedings were thereafter had in such circuit court upon such application that by order made, on the _____ day of _____ 19____, by said court [*or, by _____, circuit judge*], said special guardian was authorized to execute, acknowledge, and deliver to _____ a deed of conveyance of all the right, title and interest of said _____, infant, in and to said real estate:

Now, THEREFORE, I, the said _____, in my capacity of special guardian aforesaid, and in consideration of the premises and _____ dollars to me in hand paid by the said _____, do hereby grant and convey unto the said _____ all the right, title and interest of the said _____, infant, in and to the following described real estate in _____ county, Wisconsin, to wit: [*description of land*].

WITNESS the hand and seal of the said _____, special guardian as aforesaid, this _____ day of _____ 19____.

[SEAL.]
Special guardian of _____, Infant.

In presence of

And if there are more than one infant whose land is to be so conveyed, such form may be varied accordingly. *Ibid.*, § 2213.

No form of conveyance hereinbefore prescribed in this chapter (§§ 2203-2259) shall be deemed to exclude the use of any other form sufficient in law; and it is the duty of all parties executing a conveyance of real estate to state therein, as near as practicable, the actual and true consideration of such conveyance. *Ibid.*, § 2214.

When conveyances executed within this state of lands or any interest in lands therein are of lands or any interest therein owned by a corporation organized under any law of this state they shall be signed by the president or other authorized officers of the corporation, and countersigned by the secretary or clerk thereof. *Ibid.*, § 2216.

A conveyance may be recorded in the office of the register of deeds of every county in which any of the lands lie. *Ibid.*, § 2232.

Whenever any conveyance of lands situated in different counties shall have been recorded in any county within which any of such lands are situated a copy of the record of such conveyance, duly certified by the register of deeds, may be recorded in any other county in which any of such lands are situated in the same manner and with like effect as the originals. *Ibid.*, § 2233.

Whenever any conveyance of any lands, a part of which are situated in this state and a part in some other state, shall have been recorded in such other state a copy of the record of such conveyance, certified by the officer whose duty it is under the laws of such other state to certify to the record of conveyances, may be recorded in every county in this state in which any part of said lands are situated in the same manner and with like effect as the original. *Ibid.*, § 2234.

A letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner thereof may be recorded in the office of the register of deeds of any county in which any of the lands to which such power relates are situated. *Ibid.*, § 2237.

Every conveyance of real estate within this state (except patents issued by the United States or this state or by the proper officers of either) which shall not be recorded as provided by law shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded. *Ibid.*, § 2241.

The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned or by which the title to any real estate may be affected in law or equity, except wills and leases for a term not exceeding three years; and the term "purchaser," as so used, shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration and also every assignee of a mortgage or lease or other conditional estate. *Ibid.*, § 2242.

When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the register of deeds of the county where the lands lie. *Ibid.*, § 2243.

Every bond or contract for the sale or purchase of lands or concerning any interest in lands, made in writing, when executed and recorded as provided in section 2238, shall be notice to and take precedence of any subsequent purchase, and shall operate as a lien upon the lands therein described according to its import and meaning. *Ibid.*, § 2245.

No letter of attorney or other instrument containing a power to convey lands, when executed and recorded as provided in this chapter, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded. *Ibid.*, § 2246.

The circuit court of any county in which a conveyance of real estate shall have been recorded may make an order correcting the description in such conveyance on proof being made to the satisfaction of the court that such conveyance contains an erroneous description, not intended by the parties thereto; or when the description is ambiguous and does not clearly or fully describe the premises intended to be conveyed, if the grantor therein is dead or a non-resident of the state and the person to whom it was made, his heirs, legal representatives or assigns have been in the quiet, undisturbed and peaceable possession of the premises intended to be conveyed for the term of ten years or more; but this section shall not prevent an action for the reformation of any conveyance, and if in any doubt the court shall direct such action to be brought. *Ibid.*, § 2257.

Deeds of pews or slips in any church may be recorded by the clerk of the town in which such church is situated or by the clerk of the society or proprietors, if incorporated or legally organized. *Ibid.*, § 2259.

All deeds of lands sold for the non-payment of taxes shall be executed by the proper officer authorized by law to execute the same in the name of the state of Wisconsin, and of the proper county, city or village as the grantors therein, and shall be substantially in the following or other equivalent form:

1059. Tax Deed, Statutory Form.

To all to whom these presents shall come, greeting:

WHEREAS, (or assignee of) has deposited in the office of the county clerk of the county of , in the state of Wisconsin, a certificate (or certificates) of the [*here name the officer making the sale*] of said county, whereby it appears, as the fact is, that the following described piece (or pieces) or parcel (or parcels) of land lying and being situated in the county of , to wit. [*Here describe the lands*] [or were], for the non-payment of taxes sold by the [*here name the officer making sale*] at public auction at , in the county of , on the day of , in the year of our Lord one thousand nine hundred and , to the said for the sum of dollars and cents, in the whole, which sum was the amount of taxes assessed and due and unpaid on said tract (or several tracts) of land, together with the costs and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser (or purchasers); and whereas it further appears, as the fact is, that the owner (or owners), or claimant (or claimants) of said land has (or have) not redeemed from said sale the lands which were sold as aforesaid, and said lands are now unredeemed from such sale, whereby said described lands have become forfeited and the said purchaser, his (her or their) heirs or assigns is (or are) entitled to a conveyance thereof:

Now, THEREFORE, know all men by these presents, that the county of , in said state, and the state of Wisconsin, in consideration of the said money aforesaid and the premises, and in conformity to law, have given and hereby do give, grant and convey the tract (or several tracts) of land above described, together with the hereditaments and appurtenances, to the said , and to his (or her or their) heirs and assigns, to their sole use and benefit forever.

¹IN TESTIMONY WHEREOF, I, , the [*here designate the officer*] of the county of , have executed this deed pursuant to and in virtue of the

authority in me vested by the statutes of the state of Wisconsin, and for and on behalf of said state and the county of aforesaid, and have hereunto subscribed my name officially and affixed the seal of the said [name it], at in said county of , this day of , in the year of our Lord one thousand nine hundred and .

A. B.

[Here give official designation.]

Done in presence of
Ibid., § 1178.

In all cases of conveyance of land for non-payment of taxes due to any incorporated city or village in this state, under the provisions of the act or acts authorizing such city or village to assess and collect taxes, the deed executed shall conform as near as may be to the above form; and shall be executed in the name of the state of Wisconsin and in the corporate name of such city or village as grantor. Ibid., § 1179.

Every conveyance of any estate or interest in land, or the rents and profits of lands and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void. Ibid., § 2297.

No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended. Ibid., § 2298.

No estate or interest in lands, other than leases for a term not exceeding one year, shall be created, granted, assigned, or surrendered, unless by act or operation of law or by deed or conveyance in writing, subscribed by the party creating, granting, assigning or surrendering the same or by his lawful agent thereunto authorized by writing. Ibid., § 2302.

The provisions of this title (§§ 2297-2327c) shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor. Ibid., § 2324.

1060. Warranty Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , part of the first part, and , part of the second part, WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, ha given, granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey and confirm, unto the said part of the second part, heirs and assigns forever, the following described real estate, situate in the county of , and state of Wisconsin, to wit:

TOGETHER with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said part of the first part, either in law or equity, either in possession or expectancy of, in and to the

above bargained premises, and their hereditaments and appurtenances, TO HAVE AND TO HOLD the said premises as above described, with the hereditaments and appurtenances, unto the said part of the second part, and to heirs and assigns forever.

And the said , for heirs, executors and administrators, do covenant, grant, bargain and agree, to and with the said part of the second part, heirs and assigns, that at the time of the ensembling and delivery of these presents well seized of the premises above described, as a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all encumbrances whatever , and that the above bargained premises, in the quiet and peaceable possession of the said part of the second part, heirs and assigns, against all and every person or persons lawfully claiming the whole or part thereof, will forever warrant and defend.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

1061. Deed by Guardian, Administrator or Executor.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, , of , in the county of , state of Wisconsin, in the capacity of , send greeting:

WHEREAS, by an order of license made by the county court of county, on the , in the matter of the estate of , I, the said , in the capacity of , aforesaid, was authorized and empowered to sell at public , notice of the intended sale of said estate, and of the time and place thereof, by causing a notice of the same (wherein said real estate was described with common certainty) to be posted up in three of the most public places in the wherein said real estate is situated, to wit: the , and to be published in the , a newspaper printed and published at , for three weeks successively next before the day of sale, as required by said order of license; and having in all things fully complied with said order, and with the requirements of the statute in such case made and provided, did, on the day of , at , by virtue of said order of license, and pursuant thereto and to said notice, expose and offer for sale at and by public vendue, the real estate hereinafter described; and did then and there strike off and sell the same to , of , for the sum of dollars, he being the highest and best bidder therefor, and that being the highest sum bid for the same.

AND WHEREAS, on the day of , 19 , I, , made report of said sale to the county court of said county, which was on the same day in all things confirmed, and I ordered to execute a deed for the same;

NOW, THEREFORE, KNOW YE, that I, the said , in my capacity of , aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the sum of to me in hand paid by the said , the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said , heirs and assigns, all

To HAVE AND TO HOLD the above bargained premises to the said _____, heirs and assigns, to _____ and their use and behoof forever.

IN WITNESS WHEREOF, I, the said _____, aforesaid, have hereunto set my hand and seal, this _____ day of _____, 19 _____.

[Signature.]

Signed, sealed and delivered in presence of

[Signature.]

WYOMING.

The term "conveyance," as used in this title (§§ 2728-2842), shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, alienated, mortgaged or assigned, or by which the title to any real estate may be affected in law or in equity, except wills, leases for a term not exceeding three years, executory contracts for the sale or purchase of lands, and certificates which show that the purchaser has paid the consideration and is entitled to a deed for the lands, and contain a promise or agreement to furnish said deed at some future time. Revised Statutes of 1899, § 2728.

The term "purchaser," as used in this chapter (§§ 2728-2740), shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration, and also every assignee of a mortgage or lease, or other conditional estate. Ibid., § 2729.

Conveyances of land or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, or by his lawful agent or attorney, and recorded as directed in this title. Ibid., § 2731.

A deed of quitclaim and release shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Ibid., § 2733.

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. Ibid., § 2734.

No grant or conveyance of lands or interest therein shall be void, for the reason that at the time of the execution thereof, such land shall be in the actual possession of another, claiming adversely. Ibid., § 2735.

A conveyance by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. Ibid., § 2736.

The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of real estate shall pass all the estate of the grantor therein, unless the intent to pass a less estate shall expressly appear or be necessarily implied in the terms of the grant. Ibid., § 2737.

A deed, mortgage or conveyance may be recorded in the office of the register of deeds in the county where the land lies. Ibid., § 2754.

Every letter of attorney, or other instrument, containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, may be recorded by the register of deeds of any county in which the lands to which such letter, instrument or contract relates, or any part of such lands, may be situated, and the record thereof, or a duly certified transcript of such record, may be read in evidence in the same manner and with like effect as a conveyance recorded in such county. Ibid., § 2755.

No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded. Ibid., § 2756.

Unless otherwise provided by law, it shall be the duty of the register of deeds of each county within this state to receive and record at length all such deeds, mortgages, conveyances, patents, certificates and instruments as shall be left with him for that purpose, and he shall endorse on every such instrument the day and hour on which the same was filed for record. *Ibid.*, § 2760.

Each and every deed, mortgage, instrument or conveyance touching any interest in lands, made and recorded according to the provisions of this title, shall be notice to and take precedence of any subsequent purchaser or purchasers of such land from the time of the delivery of any such instrument at the office of the register of deeds of the county in which the lands described in such instrument are situate, for record. *Ibid.*, § 2761.

Every conveyance of real estate within this state, which shall not be recorded as required by law, shall be void, as against any subsequent purchaser or purchasers in good faith and for a valuable consideration of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. *Ibid.*, § 2762.

When a deed or mortgage purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the register of deeds of the county where the lands lie. *Ibid.*, § 2763.

Deeds or mortgages of pews or slips in any church may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society, or proprietors, if incorporated or legally organized. *Ibid.*, § 2765.

A warranty deed conveying land may be substantially in the following form:

1062. Warranty Deed, Statutory Form.

A. B., grantor, [*here insert name or names of grantor and place of residence*], for and in consideration of [*here insert consideration*] in hand paid, conveys and warrants to C. D., grantee, [*here insert grantee's name or names and place of residence*] the following described real estate [*here insert description*] situate in the county of [*here insert name of county*] state of Wyoming. [*And when the right of homestead is involved, add the following*]: Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this day of A. D. .

In the presence of

A. B.

Ibid., § 2766.

Every deed in substance in the form prescribed in the preceding section, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs and assigns, with covenants on the part of the grantor, (1) that at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple in and to the premises therein described, and had good right and power to convey the same; and (2) that the grantor warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon the grantor, his heirs and personal representatives, as fully, and with like effect as if written at length in such deed. *Ibid.*, § 2767.

A quitclaim deed may be substantially in the following form:

1063. Quitclaim Deed, Statutory Form.

A. B., grantor, [*here insert grantor's name or names, and place of residence*] for the consideration of [*here insert the consideration*] conveys and quitclaims to [*here insert grantee's name or names*] all interest in the following described real estate, [*here insert description*] situate in the county of [*here insert name of county*] in the state of Wyoming. [*And where the right of homestead is released, add the following*]: Hereby relinquishing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this day of A. D. .
In the presence of

A. B.

Ibid., § 2768.

Every deed in substance in the form prescribed in the foregoing section, when otherwise duly executed, shall be deemed and held a sufficient conveyance, release and quit claim to the grantee, his heirs and assigns, in fee of all legal and equitable rights of the grantor at the time of the execution and delivery of such deed, in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention. Ibid., § 2769.

A deed of quit claim without the use of the word "release," shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Ibid., § 2771.

When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, and in all cases where such decedent, if living, might be compelled to make such conveyance, the court or judge may make an order authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto. Ibid., § 4817.

Every conveyance made in pursuance of an order or decree as provided in this chapter (§§ 4817-4825), shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance. Ibid., § 4823.

If the person entitled to the conveyance dies before the commencement of proceedings therefor under this chapter, or before the completion of the conveyance, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent, may, for the benefit of the person so entitled, commence such proceedings, or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the person entitled to it, or in the executor, or administrator, for their benefit. Ibid., § 4824.

When two or more persons who own an interest in land become bound in writing for the sale and conveyance thereof, and one of them dies before the land is conveyed, the survivor or survivors may, by petition against the purchaser, and the heirs or devisees of such deceased party, be authorized to complete such contract. Ibid., § 4122.

The petition must set forth the name of all the contracting parties, describe the lands contracted for, state the time the contract was made, that the contract has been fully performed, and have annexed a copy of the contract. Ibid., § 4123.

If the court find the allegations of the petition to be true, it may make an order authorizing and empowering the survivors to complete the contract by conveying the land; and the deed shall recite the order and shall convey as complete and perfect a title and have the same effect as if executed by all the owners. Ibid., § 4124.

When a person who has entered into a written contract for the sale and conveyance of an interest in land dies before the completion thereof, and

his executor, administrator or other legal representative desires to complete the contract, he may file a petition therefor in the district court of the county in which the land, or any part thereof, is situate. Service may be made as in civil actions, and the heirs at law, devisees, or other legal representatives of the deceased vendor, when not plaintiffs, must be made defendants in the action. *Ibid.*, § 4125.

The court, after causing to be executed to and for the benefit of the estate of the deceased, its just part and proportion of the consideration of the contract, may authorize the executor, administrator or other legal representative to complete the contract, and to execute a deed for and on behalf of the heirs at law to the purchaser, which shall recite the order, and be as binding on the heirs at law, and all other persons interested, as if it had been made by the deceased in his lifetime. *Ibid.*, § 4126.

The heirs at law, or devisees, of a person who purchased an interest in land by written contract, and died before conveyance thereof to him, may compel such conveyance as the deceased might have done. *Ibid.*, § 4127.

The deed to be executed by the officer to the purchaser, under the provisions of this chapter (§§ 3813-3931), shall contain a statement of the judgment upon which the lands therein described were sold, and of the date of the execution, and may be in the following form:

1064. Deed by Officer, to Carry Out Contract, Statutory Form.

WHEREAS, A. B. did, at the _____ term of the district court for the county of _____ (as the case may be), recover a judgment against C. D. for the sum of _____ dollars and _____ cents, and costs of suit; upon which judgment an execution was issued, dated on the _____ day of _____, A. D. _____, directed to _____ to execute; and by virtue of the said execution the said _____ levied upon the lands hereinafter described, and the same were struck off and sold to _____, he being the highest and best bidder therefor, and the time and place of sale having been duly advertised according to law.

Now, HAVING THEREFORE, Know all men by this deed, that I, _____, of the said county of _____, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said _____, his heirs and assigns, the following described tract or tracts of land, [*describe the lands*] to have and to hold the said described premises with all the appurtenances thereunto belonging, to the said _____, his heirs and assigns forever.

WITNESS my hand and seal this _____ day of _____, A. D.

[L. s.]

If the purchaser shall have assigned his certificate of purchase, then there may be inserted after the word "law" in the foregoing form, in substance as follows, "and the said _____ having duly assigned his certificate to (as the case may be)." *Ibid.*, § 3888.

Any deed so executed shall be evidence that the provisions of law in relation to sales of land upon execution were complied with, until the contrary shall have been shown, and such deed shall be considered as conveying to the grantee therein named all the title, estate and interest of the defendant or defendants, in the execution therein named, in and to the lands thereby conveyed, of whatever nature the same may be, but which deed shall not be construed to contain any covenant upon the part of the officer executing the same. *Ibid.*, § 3889.

An officer, including a master commissioner and a special master, who sells real property, shall on confirmation of the sale, make to the purchaser a deed, which shall contain the names of the parties to the judgment, the date

and amount of the judgment, the substance of the execution or order on which the property was sold, the substance of the officer's return thereon, and the order of confirmation. *Ibid.*, § 3854.

The deed shall be prima facie evidence of the legality and regularity of the sale; and all the estate and interest of the person whose property the officer so professed to sell and convey, whether that interest existed at the time the property become liable to satisfy the judgment, or was acquired subsequently, shall be thereby vested in the purchaser. *Ibid.*, § 3855.

A deed of trust to secure debts, or indemnify sureties, may be in the following form or to the same effect:

1065. Deed of Trust, Statutory Form.

THIS DEED, made the day of , in the year of , between
(the grantor) of the one part, and (the trustee) of the other
part; WITNESSETH: that the said (the grantor) doth [or, do] grant
unto the said [the trustee] the following property [here describe it],
in trust to secure [here describe the debts to be secured or the sureties to
be indemnified, and insert covenants or any other provisions the parties may
agree upon];

WITNESS the following signatures and seals [or signature and seal].

[Signatures and Seals.]

Ibid., § 2796.

Every deed for real estate sold under a deed of trust may be made in the following form, or to the same effect:

1066. Deed under Deed of Trust, Statutory Form.

THIS DEED, made the day of between A. B., trustee, of the first
part, and C. D., of the second part, whereas the said trustee, by virtue of
the authority vested in him by the deed of trust hereinafter mentioned (or
by an order of the district court of the county of), made on the
day of (as the case may be), did sell as required by law, a certain
tract (or lot, as the case may be), of land situated in the county (or city,
town or village, as the case may be), of conveyed by E. F. to the said
A. B., trustee (or to G. H., trustee, as the case may be), by deed bearing date
the day of and recorded (if it be recorded), in a deed book ,
on page , in the office of the recorder of the county of , and
bounded and described therein as follows: [*Here insert the description and
quantity as set forth in the deed of trust and any other description deemed
necessary*]; at which sale the said C. D. became the purchaser for the sum of
 dollars. Now, therefore, this deed witnesseth that the said trustee
hereby conveys and grants to the said C. D. the said real estate hereinbefore
described, with all right, title and interest held by the said E. F. therein,
to have and to hold the said real estate and premises unto the said C. D.,
his heirs and assigns forever.

WITNESS the following signature or seal.

[SEAL.]

Ibid., § 2799.

Immediately after the expiration of the term of three years from the date of the sale of any lands for taxes, under the provisions of this chapter (§§ 1867-1905), which have not been redeemed, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser; upon the return of the certificate of purchase, the treasurer is required to demand two dollars for each deed made by him on such sales; but any number of parcels of land bought by one person may be included in one deed, as may be desired by the purchaser. *Ibid.*, § 1894.

Deeds executed by the treasurer shall be substantially in the following form:

1067. Tax Deed, Statutory Form.

KNOW ALL MEN BY THESE PRESENTS, that whereas, the following described real property, viz.: [*here insert the description*] situated in the county of _____ and state of Wyoming, was subject to taxation for the year (or years) A. D. _____; and whereas the taxes assessed upon the said real property for the year (or years) aforesaid, remained due and unpaid at the date of such sale hereinafter named; and whereas the treasurer of the said county did on the _____ day of _____, A. D. _____, by virtue of the authority vested by law, at (an adjourned sale), the sale begun and publicly held on the _____ day of _____, A. D. _____, expose to public sale at the court house (or county building) in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest and costs then due, and remaining unpaid on said property; and whereas at the time and place aforesaid, A. B., of the county of _____ and of _____, having offered to pay the sum of _____ dollars and _____ cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property for [*here follows a description of the property sold*] which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer the said property was stricken off to him at that price (and whereas the said A. B. did, on the _____ day of _____ A. D. _____, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property, to C. D., of the county of _____ and of _____) and, whereas, two years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided for by law: now, therefore, I, E. F., treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said A. B. (or C. D.) his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him, the said A. B. (or C. D.) his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

IN WITNESS WHEREOF, I, E. F., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, on this _____ day of _____, A. D. _____

E. F., *Treasurer.*

Ibid., § 1897.

CHAPTER XXIV.

DEFEASANCES.

WHERE a conveyance of property is made in absolute terms, but the grantee gives an instrument to the grantor, which declares that on a specified condition the grant shall be defeated, the latter instrument is termed a defeasance. The general practice is to embody the terms of the defeasance in the grant itself; and this is the only safe way, especially in conveyances of real property. A separate defeasance is rarely to be resorted to.

1067a. Defeasance and Covenant to Account, Given on Receiving an Assignment of a Collateral Security.

WHEREAS, A. B., of the city of _____, is this day indebted to us in the sum of _____ dollars, and has assigned and transferred to us, by an assignment in writing, under his hand and seal, a certain bond, executed by C. D., of the city of _____, and a mortgage upon certain premises situated in said city of _____, executed by the said C. D., and M., his wife, which bond and mortgage bear date on the _____ day of _____, one thousand nine hundred and _____, and are conditioned for the payment of the sum of _____ dollars, on the _____ day of _____, 19 _____, and the interest thereon from the date of said bond and mortgage, at and after the rate of _____ per cent. per annum, and to be paid semi-annually; which assignment of said bond and mortgage, though absolute in its terms, is intended in fact to be and is received by us as collateral security for the payment of the amount so due to us as aforesaid, and any other sum or sums which may hereafter become due and owing from the said A. B. to us.

NOW THEREFORE, in consideration of the premises, we do hereby, for ourselves, our heirs, executors, and administrators, covenant and agree to and with the said A. B., his executors, administrators, and assigns, that we will well and faithfully account to him or them for, and pay over to him or them, any and all moneys which shall be received or collected by us, our executors, administrators, or assigns, upon or from the said bond and mortgage, or either of them, over and above the amount so due to us from said A. B., and interest thereon from this date; and that whenever the said amount so due to us, and all interest thereon, shall be fully paid to us, we will re-assign the above-described bond and mortgage to him, his executors, administrators, or assigns, provided the said bond and mortgage shall not then have been paid in full or otherwise satisfied or foreclosed. But it is expressly understood that nothing in this agreement is to prevent our prosecuting said bond or foreclosing said mortgage for the purpose of enforcing the payment of the moneys secured thereby, in case of any default in the payment thereof or in the performance of any of its conditions, according to the terms thereof.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this
day of _____, 19 _____ . [Signatures and seals.]

CHAPTER XXV.

DOWER.

For statutory provisions of New York relating to dower and its enforcement, see the Real Property Law, §§ 13, 190-207; Birdseye, C. & G. Cons. Laws, 1909, pp. 4925, 5030-5042.

The widow of an alien is not entitled to dower unless he took steps to become a citizen of the United States. If a husband exchanges lands for other lands, the widow does not have dower of both, but must make her election, and if she does not commence an action to recover dower in the lands given in exchange within one year after her husband's death, she is deemed to have elected to take her dower of the lands received in exchange.

Where the husband mortgages his land before marriage, the widow has dower as against every person, except the mortgagee and those claiming under him. If the widow does not unite in a purchase-money mortgage, she is not entitled to dower against the mortgagee, but is as to every other person. Under foreclosure of such purchase-money mortgage, she is entitled to the interest or income of one-third part of any surplus moneys. There is no dower in lands mortgaged to husband unless he subsequently acquires the absolute title, and no dower if wife is divorced for her misconduct. Dower is also barred by jointure; also by pecuniary provisions made for the benefit of the intended wife, and in lieu of dower, if assented to by her. If before the marriage, but without her assent, or if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision by devise or otherwise is made for her in lieu of dower, she must elect between the jointure, or pecuniary provision, or devise and her dower.

Widow is deemed to have elected to take the jointure, devise, or pecuniary provision, unless within one year after death of husband she enters upon lands assigned for her dower, or commences an action for her dower. Time to elect may be enlarged by competent court on affidavit showing the contest of probate of the will containing such jointure, devise, or pecuniary provision, etc., and on such notice as court may direct. Such order to be indexed and recorded as a *lis pendens*.

Every jointure, devise, or pecuniary provision in lieu of dower is forfeited in cases in which dower is forfeited, and the property immediately vests as it would in case of her death. The right of the wife to her dower or jointure can be conveyed only by deed duly acknowledged.

A widow also has the right of quarantine for forty days, and may bequeath a crop in the ground on land held by her in dower. A divorced woman may release to her husband her inchoate right of dower in any real property theretofore owned or thereafter acquired by him. An adult married woman may also release her inchoate right of dower by an attorney in fact.

The provisions relating to an action to enforce the dower right of a widow are regulated by the Code Civ. Pro., §§ 1596-1625.

In several of the states of the Union the common-law right of dower or curtesy does not exist; but where they have been abolished, statutory pro-

visions creating substantially the same estates as the common-law dower or curtesy will be found.

(1) Common-law dower and curtesy in District of Columbia, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Tennessee, Virginia.

In some of the states, e. g. New York, the wife may bar curtesy by will or by making a deed in which the husband need not join.

(2) Common-law dower and curtesy abolished in California, Colorado, Idaho, Mississippi, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Utah, Washington.

(3) Common-law dower and curtesy abolished and statutory provisions substituted in Alabama, Connecticut, Florida, Indiana, Iowa, Kansas, Maine, Oregon, Wyoming.

(4) Common-law dower retained but curtesy abolished and statutory provisions substituted in Arkansas, Hawaii, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Montana, Ohio, Vermont, Wisconsin.

(5) Common-law dower and curtesy retained and dower extended, in some cases, to one-half and, in other cases, to the whole of the real estate, in Delaware.

(6) Common-law dower retained and extended, in some cases, to one-half and, in other cases, to the whole of the land, but curtesy abolished and statutory provisions substituted giving surviving husband same estate as surviving wife, in Arizona.

(7) Common-law dower and curtesy retained and curtesy extended to cases where no issue born alive, in Alaska, Pennsylvania, West Virginia.

(8) Common-law dower but no curtesy in Georgia, South Carolina.

(9) No common-law dower or curtesy in Louisiana, Philippine Islands, Porto Rico, Texas.

See also under chapter on ACKNOWLEDGMENTS AND PROOF OF DEEDS, under subheads *Husband and Wife*.

1068. Jointure in Lieu of Dower Right.

THIS AGREEMENT, made this day of , 19 , between A. B., of , party of the first part, C. D., of , party of the second part, and E. F., of , party of the third part, WITNESSETH, as follows:

First. The said A. B. doth hereby covenant and agree to and with the said C. D., his heirs and assigns, in consideration of a marriage about to be contracted between him and the said E. F., that he, the said A. B., his heirs and assigns, shall and will forever hereafter stand seized of and in that certain tract, piece, or parcel of land, with the appurtenances, situate, etc. [*describing premises*], to the following uses, viz.: to the use of the said A. B., for and during his natural life, and after his marriage with the said E. F., and after his decease, to the use of the said E. F., during her natural life [*or, so long as the said E. F. shall remain his widow*], for her jointure, and in full satisfaction of her entire dower in his estate after his decease, and at the expiration of her estate, to the use of his heirs and assigns forever.

Second. The said E. F., in consideration of the premises, and of one dollar to her in hand paid, hereby covenants and agrees with the said A. B., that the lands so assigned and set part to her shall be in full satisfaction of her dower or claim of dower in his, the said A. B.'s estate, and shall bar her from making any claim to any dower, if she shall survive him after said marriage, and that she will not claim any share in his personal estate unless the said A. B. shall give her some part thereof by his will, or by some act done by him subsequent to the execution of these presents.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, on this day of , in the year 19 .

In presence of:

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

[*Acknowledgment.*]

CHAPTER XXVI.

EXTRADITION.

The Constitution of the United States provides that a person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

The constitutional and statutory provisions (Const., art. V, § 2, ¶ 2; U. S. R. S., §§ 5278, 5279), relative to extradition of fugitives from justice between the states do not forbid requisition for an offense less than felony. They include all offenses known to the law, including misdemeanors.¹ The provisions of U. S. R. S., §§ 5278, 5279, apply to a territory; and under Act Feb. 9, 1903, c. 529, § 2, 32 Stat. L. 807, also to the Philippine Islands, so far as applicable.

The mode of proceeding to effect this surrender is regulated by the law of the state in which it is sought to arrest the offender and have him delivered up. At a meeting of the delegates of the governors of many of the states, held in New York city, in 1887, the following rules for interstate rendition were adopted:

RULES OF PRACTICE.

Adopted August 24, 1887, by the delegates of the governors of the states represented and the delegate of the chief justice of the supreme court of the District of Columbia, as follows:

¹ Ex parte Reggel, 114 U. S. 642.

We, the undersigned, delegates to an interstate extradition conference, appointed by the governors of the several states and territories, and assembled at New York city, this 24th day of August, 1887, hereby certify that after deliberation, the following rules and forms have been adopted, and we recommend the use of the same in all cases of interstate extradition: Charles H. Phelps, California; Alexander B. Hagner, District of Columbia; Tilton E. Doolittle, Connecticut; W. W. Montgomery, Georgia; T. J. Simmons, Georgia; Boykin Wright, Georgia; J. K. Edsall, Illinois; Almon A. Strout, Maine; Edgar J. Sherman, Massachusetts; Milo D. Campbell, Michigan; Moses E. Clapp, Minnesota; William Leese, Nebraska; Daniel Barnard, New Hampshire; Goodwin Brown, New York; Theodore F. Davidson, North Carolina; Charles E. Prior, Ohio; W. S. Kirkpatrick, Pennsylvania; C. W. Stone, Pennsylvania; Edwin D. McGuinness, Rhode Island; W. K. Bachman, South Carolina; John W. Stewart, Vermont; Henry W. Flournoy, Virginia; L. J. Rusk, Wisconsin.

RULES.

The application for the requisition must be made by the district or prosecuting attorney for the county or district in which the offense was committed, and must be in duplicate original papers or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney:

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled, in Roman capital letters; for example: JOHN DOE.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this state for trial at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the state or territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for is granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretenses, embezzlement, or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of the state on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the state where the alleged crime was committed at the time of the commission thereof, and is found in the state upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by the affidavits taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant, must be duly certified.

6. Upon the renewal of an application, for example, on the ground that the fugitive has fled to another state, not having been found in the state on which the first was granted, new or certified copies of papers in conformity with the above rules must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.

They have been approved and are in force in many of the states. They have been adopted with some modifications and additions in other states, while several states and territories have adopted no rules.

Most of the states and territories have printed rules and forms adopted and issued by the executive department of the state, and which can be obtained upon application. Substantially, all the states have enacted statutes covering interstate extradition, and these should be examined before any proceedings are taken. The executive department should also be applied to for its most recent rules, regulations, and forms.

In respect to fugitives from foreign countries, the law of nations requires that persons charged with felony or other high crimes, and escaping into foreign and friendly jurisdictions, should be delivered up upon sufficient evidence of their guilt. This matter is now, however, covered in most cases by treaties between the United States and other countries. The proceeding, however, is a judicial one to be effectuated through the tribunals of justice, and is not to be carried on by the executive authority upon the mere provision of the treaty, unless power be given to that department by law.

For full copies of the foreign treaties and of the statutes and rules of the executive departments of the various states, governing interstate extradition, see Moore on Extradition (Boston, 1891).

CHAPTER XXVII.

FENCES AND FENCE-VIEWERS. .

The statutes of several of the states give a summary mode of determining controversies arising out of the necessity for division fences or walls between the adjoining lands of different owners. Certain local officers—in the state of New York, for instance, the assessors and commissioners of highways in each town, who are designated, when acting in this function, as “fence-viewers”—are empowered to decide as to the sharing of the expenses of fences, and damages from neglect to repair them. For the details of the powers of these officers the statutes of the state must be consulted.

The same officers are also, in some cases, authorized to determine questions of damage done by cattle, etc. See also chapters on HIGHWAY LAW; STRAYS; WRECKES.

THE provisions in the state of New York on this subject are contained in the Town Law, §§ 360-369; Birdseye, C. & G. Cons. Laws, pp. 6230-6236.

The Town Law, § 121, Birdseye's C. & G. Cons. Laws, p. 6179, makes the assessors and town superintendent of highways the fence-viewers of their town.

Owners of adjoining tracts of land, unless they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands. On lands bordering upon navigable lakes, streams, or rivers, the fences shall extend down to line of low-water mark, and if owners of lands bounded by streams not navigable cannot agree, the fence-viewers may direct upon which bank, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

Subdivision or new apportionment of any division fence made necessary by change of title shall be made by adjoining owners. The value of any fence, and the proportion thereof to be paid by any person, shall be determined by two fence-viewers, in case of disagreement. Disputes as to liability as to division fences shall be settled by any two of the fence-viewers of the town, one to be chosen by each party, and if either party neglect after eight days' notice to make such choice, the other party may select both. The fence-viewers shall see that all interested parties have reasonable notice of the hearing, and shall examine the premises, and hear the allegations of the parties. If they cannot agree, they shall select another fence-viewer to act with them, and the decision of any two shall be reduced to writing, contain a description of the fence, and the proportion to be maintained by each party, and be filed in the town clerk's office, and be final upon the parties and those holding under them. The fence-viewers may subpoena and examine witnesses, who are entitled to the same fees as in justices' courts. Each fence-viewer is entitled to \$1.50 per diem.

For neglect to make or repair division fences, the party shall be liable to damages accruing thereby, to be ascertained and appraised in writing by any two fence-viewers, and recovered with costs. If such neglect or refusal shall continue for one month after request, in writing, to make or repair the fence, the party injured may make or repair the same at the expense of the party so neglecting or refusing.

Fences destroyed by accident must be repaired within ten days by the person bound to do so on the written requisition of any person interested. In case of refusal or neglect, the party injured may make or repair such fence at the expense of the party refusing or neglecting to do so. Any person maintaining a fence not according to the rules and regulations prescribed by the electors of the town, is precluded from recovering compensation for damages done by any beast lawfully kept upon adjoining lands. If the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established. Any person neglecting to erect or repair a division fence, is not permitted to maintain an action for damages by reason of beasts straying from adjoining lands, but shall be liable to pay to parties injured all damages which shall accrue to their lands and the crops, fruit trees, and shrubbery thereon, and fixtures connected with the land. Such damages to be ascertained and appraised in writing by any two fence-viewers. Such appraisalment to be only *prima facie* evidence of the amount of damage suffered.

Barbed wire shall be used in the construction of fences, only on written consent of the adjoining owner. If such consent is refused, such fence may, nevertheless, be built of four strands of wire, with a sufficient bar of wood at the top, and the size of such top bars and of the posts and supports of such fence and their distances apart shall be such as the fence-viewers of the town may prescribe. It must be kept in good repair, for if the fence is erected without written consent of owner of adjoining land, the person erecting it is liable for all damage that may be occasioned by reason of such fence. Railroad corporations not allowed to use barbed wire in fences along their lines.

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1069. Decision of Fence-Viewers as to value of Fence, and Portion to be Maintained by an Owner who has Previously Let his Lands Lie Open.

COUNTY OF _____, }
 Town of _____, } ss.

WHEREAS, A. B. and Y. Z. are the respective owners of certain adjoining lands in the town of _____, and the said A. B., on or about the _____ day of _____, erected a division fence between the land belonging to him, and that of the said Y. Z., who allowed his own lands to lie open; and,

WHEREAS, the said Y. Z. has recently inclosed the land belonging to him, and a disagreement has arisen between them as to the just proportion of the value of the said division fence, to be paid for by the said Y. Z.:

NOW, THEREFORE, we, the subscribers duly chosen by the parties to hear and determine the matter, do hereby certify that we, after due notice to each of the owners of the time and place of the hearing, and after having examined the premises and heard the allegations, do determine and decide as follows: that the following is a correct description of the fence built by the said A. B., as aforesaid [*here describe the fence*]; that the value of the fence, at the time of erecting the same, was _____ dollars; and that the just proportion of said value to be paid by the said Y. Z. to the said A. B., is _____ dollars [or, that the proportion of the division fence which should be built by said Y. Z. is as follows] [*describing it*]; and we certify that the fees for our services amount to _____ dollars.

GIVEN under our hands, at _____, this _____ day of _____, _____.

[Signatures and titles.]

1070. Decision as to Proportion of Division Fence to be Maintained.

COUNTY OF _____, }
 Town of _____, } ss.

WHEREAS, A. B. and Y. Z. are the respective owners of certain adjoining lands in the town of _____, and a disagreement has arisen between them as to the just proportion of a division fence to be built or maintained by them respectively; WE, the subscribers, duly chosen by the parties to hear and determine the matter, having examined the facts and viewed the premises, decide that said division fence should be built as follows [*here describe the fence*]; that one _____ part of said fence is the proper proportion thereof to be built by the said A. B.; and that the remaining _____ part is the proper proportion thereof to be built by the said Y. Z.; and we certify that the fees for our services amount to _____ dollars.

GIVEN [*etc., as in the preceding form*].

1071. Decision of Fence-Viewers by Reason of Transfer of Title.

COUNTY OF _____, }
 Town of _____, } ss.

WHEREAS, A. B. and C. D. have disagreed in regard to the division fence between certain lots of land transferred to them by X. Y.;

NOW, THEREFORE, we, the subscribers, two of the fence-viewers of said town, having been duly chosen by said owners to hear and determine the matter, do certify, that upon the application of said owners, we have examined the premises and have heard their allegations after due notice to them, and that due deliberation having been had thereon, we find and determine, that the correct description of said division fence is as follows [*here describe it*]; and that the _____ part of said fence at the _____ end thereof is the proportion thereof to be built and kept in repair by said A. B., and that the remainder of said fence is the proportion thereof to be built and kept in repair by said C. D., and we further decide that the value of the division fence between said lots is the sum of _____ dollars, and that the proportion thereof to be paid by said A. B. is the sum of _____ dollars, and we further certify that our fees for said services herein amount to the sum of _____ dollars.

Dated, this _____ day of _____.

E. F. and G. H.,
Fence-Viewers.

1072. Appraisement of Damage where One Owner Has Neglected to Keep His Fence in Repair.

COUNTY OF _____, }
 Town of _____, } ss.

WHEREAS, application has been made to the undersigned by A. B., the owner of land adjoining the land of Y. Z., in the town of _____, to ascertain and appraise his damages arising in consequence of the refusal [*or, neglect*] of the said Y. Z. to keep in repair [*or, to build*] his proportion of a division fence between the aforesaid lands, we have examined the facts and viewed the premises, and after due notice to said Y. Z., we do decide and determine that the said A. B. has sustained damage to his land, crops, fruit trees, and shrubbery, in consequence of the refusal [*or, neglect*] of the said Y. Z. to maintain [*or, make*] his proportion of such division fence, as aforesaid, which said damages we have ascertained, and appraise at _____ dollars; and we certify that the fees for our services amount to _____ dollars.

GIVEN [*etc., as in Form 1069*].

1073. Notice to Build or Repair Division Fence.

You are hereby notified and requested, pursuant to statute, to build and maintain [*or, to put in repair*] your portion of the division fence between your land and the lands of the undersigned in the town of _____, in the county of _____, within one month after the service upon you of this notice, or in case of your failure [*or, neglect*] so to do, the undersigned will cause the same to be built [*or, repaired*] at your expense.

[*Date.*]

[*Signature.*]

[*Address.*]

1074. Notice of Wish to Remove Portion of Division Fence and Let Land Lie Open

Please take notice, that I shall apply to _____ and _____, two of the fence-viewers of the town of _____, on the _____ day of _____, instant, for permission to remove the division fence between the land occupied by you in said town, and that owned and occupied by me, lying adjacent thereto.

[Date.]

[Signature.]

[Address.]

1075. Notice by Owner that He Desires to Have His Lands Inclosed.

Please take notice that I intend to have the lands owned by me in the town of _____, in the county of _____, adjoining your lands and now lying open, inclosed, and that I will refund to you a just proportion of the value of the division fence made and maintained by you between said lots [or, and you are hereby requested to build and maintain your proportion of the division fence].

[Date.]

[Signature.]

[Address.]

1076. Request to Repair Fence Destroyed by Accident.

You are hereby notified and required pursuant to law to repair [or, build], within ten days after the service of this notice upon you, your just proportion of the following fence, to wit: [*here describe it*], which fence has been destroyed [or, injured] by [*state the casualty*], and that in case of your refusal [or, neglect], I shall cause the same to be repaired [or, rebuilt] at your expense.

Dated, this _____ day of _____.

[Signature.]

[Address.]

1077. Permit by Fence-Viewers.

COUNTY OF _____, }
 Town of _____, } ss.

WE, the undersigned, two of the fence-viewers of the town of _____, hereby certify, that upon the application of A. B., made in accordance with a notice, of which the above is a copy, duly served upon Y. Z., therein mentioned, more than ten days before this day, we have examined the premises where the division fence named in said notice is situate, and do determine that the same may, with propriety, be removed.

GIVEN [*eto., as in Form 1069*].

1078. Appraisement of Damage by Cattle.

COUNTY OF _____, }
 Town of _____, } ss.

WE, the undersigned, two of the fence-viewers of the town of _____, hereby certify, that upon the application of A. B., we have examined into the damages done by [*give the number and description of cattle as near as may be*], distrained by him doing damage on his lands, and having viewed the premises and ascertained the damages, do hereby certify the amount of such damages to be _____ dollars; and that the fees for our services are _____ dollars.

And a disagreement having arisen between the said A. B. and Y. Z., the owner of the adjoining land, touching the sufficiency of the fence along [*designate it*], we, having examined the same, and heard the allegations and proofs of the parties, certify that we consider the said fence sufficient [or, insufficient].

GIVEN [*etc., as in Form 1069*].

1079. Certificate that Sheep were Killed by Dogs.

COUNTY OF _____, }
Town of _____, } ss.

WE, the undersigned, two of the fence-viewers of the town of _____, hereby certify, that upon the application of A. B., the owner of sheep [*or, lambs*], alleged to be killed by dogs, we proceeded to inquire into the matter, and to view the sheep [*or, lambs*] killed, and examined witnesses in relation thereto; and that we find that _____ sheep [*or, lambs*], belonging to the said A. B., were killed by dogs, and in no other manner; and we also certify, that the amount of damages sustained by the said A. B., in consequence of the killing of said sheep [*or, lambs*], as aforesaid, is _____ dollars; and that the value of said sheep [*or, lambs*] is _____ dollars; and that the fees for our services are _____ dollars.

GIVEN [*etc., as in Form 1069*].

CHAPTER XXVIII.

FORECLOSURE.

Mortgages of real property are commonly foreclosed by a suit brought for the purpose, in which all persons having an interest subject to the mortgage are made parties. But if a mortgage contains a power of sale, which is usually the case, the holder may foreclose the mortgage by selling the property under the power of sale, by auction, on due notice to all parties interested. This is a common and convenient mode in simple cases where the parties are few in number. The mode in which this may be done, and the necessary method of preserving evidence of the sale, so as to assure the purchaser's title, are prescribed by statute. It is not allowable to proceed in both methods of foreclosure at the same time.

In general, it may be said that any holder of the mortgage, whether he be the original mortgagee, or an absolute assignee, or an executor or administrator, or an officer of a corporation, or other trustee holding the mortgage, may proceed to enforce the power of sale by advertising and selling, pursuant to the statute.

Notice of foreclosure.—In order to foreclose a mortgage by advertisement,¹ the mortgage, if not already recorded, should be put on record in the county where the lands lie; a notice that it will be foreclosed by a sale of the mortgaged premises, or some part of them, must be prepared, specifying the names of the mortgagor and mortgagee, and the assignee of the mortgage, if any; the date of the mortgage and where and when recorded; the amount claimed to be due thereon, at the time of the first publication of such notice, and a description of the mortgaged premises, conforming substantially with that contained in the mortgage. This notice must be given as follows:

¹ These directions are according to the law of New York. Co. Civ. Pro., §§ 2387-2409, 3293; General Construction Law, § 20, Birdseye, C. & G. Cons. Laws. p. 1946. There are similar provisions in the other states.

1. *By publishing it* in a newspaper published in the county where the property intended to be sold, or a part thereof, is situated, at least once in each week, for twelve successive weeks, immediately preceding the day of sale. If the printers of the papers in the county refuse to publish the notice at the legal rates, it may be published in the state paper.

2. *Posting*.—A copy of the notice must be affixed at least eighty-four days prior to the day of sale, in a conspicuous place, at or near the entrance of the building where the county court is directed to be held, in the county where the premises are situated; or if there be two or more such buildings, then of that which shall be nearest the premises. In the computation of the time of posting, the day of sale cannot be included.

3. *Recording*.—A copy of the notice must be delivered at least eighty-four days prior to the day of sale, to the clerk of the county in which the mortgaged property, or any part thereof, is situated.

4. *Service*.—A copy of the notice must be served at least fourteen days prior to the day of sale, upon the mortgagor or his personal representatives (that is, his executors and administrators), and upon the subsequent grantees and mortgagees of the premises, whose conveyance and mortgage shall be upon record at the time of the first publication of the notice, and upon all persons having a lien by or under a judgment or decree upon the mortgaged premises, subsequent to such mortgage, personally, or by leaving the same at their dwelling-house, in charge of some person of suitable age, or in the case of any other person than the mortgagor, his wife, widow, executor or administrator, or a subsequent grantee of record, or his wife or widow, by serving a copy of such notice upon said persons, at least twenty-eight days prior to the time therein specified for the sale, by depositing the same in the post-office, at some place within the state, properly inclosed in a postpaid wrapper and directed to the said persons at their respective places of residence.

All these four modes of notice must be pursued to make a valid sale under the statute.

The sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication of both notices at least once a week until the time to which such sale shall be postponed.

Mode of sale.—The sale must be at public auction, in the daytime, in the county where the mortgaged property, or some part thereof, is situated; except in sales of property mortgaged to the people of this state, in which case the sale may be made at the capitol. If the premises consist of distinct farms, tracts, or lots, they must be sold separately; and no more farms, tracts, or lots should be sold than necessary to satisfy the amount due on such mortgage, at the time of the sale, and the costs and expenses allowed by law. But where two or more buildings are situated upon the same city lot, and access to one is obtained through the other, they must be sold together.

The mortgagee, his assigns, and his or their legal representatives, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

Effect of sale.—A regular foreclosure by advertisement, and the sale made in pursuance thereof to a purchaser, in good faith, is equivalent to a sale under a decree in a court of equity, so far only as to be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of a title subsequent to the mortgage, and also of any person having a lien, by any judgment

or decree, on the premises, or any part thereof, subsequent to such mortgage, and of any person having any lien or claim by or under such judgment or decree, who has been duly served with a copy of the notice of sale.

An affidavit of the fact of any sale pursuant to such notice may be made by the person who officiated as auctioneer at such sale, stating the time and place at which the same took place, the sum bid, and the name of the purchaser, and to it shall be annexed a printed copy of the notice of sale. An affidavit of the publication of such notice of sale and of any notice of postponement may be made by the printer or publisher of the newspaper in which the same was inserted, or by his foreman or principal clerk; and an affidavit of the affixing of a copy of such notice at or near the entrance of the courthouse, may be made by the person who affixed the same, or by any other person who saw such notice so posted; and an affidavit of the affixing a copy of such notice in the book kept by the clerk, may be made by the county clerk, or by any other person who saw such notice so affixed; and an affidavit of the serving a copy of such notice on the persons entitled to service thereof, may be made by the persons who serve the same. These affidavits may be filed in the office for recording deeds and mortgages in the county where such sale took place. The affidavits are to be recorded at length in the book kept for the record of deeds; and the original affidavits, the record thereof, and certified copies of such record are presumptive evidence of the facts therein contained.

Great care should be taken in drawing the affidavits, where these are relied on, as effecting the conveyance; because it is held that, if defective, they cannot be sustained or amended by parol evidence.

When these affidavits are filed and recorded, they are a substitute for a deed. But until such affidavits be made, filed, and recorded, or a deed is given in pursuance of the sale, no title passes to the purchaser.

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1080. Notice of Sale Under Power in Mortgage..

WHEREAS, Y. Z., of _____, on the _____ day of _____, _____, made and executed a mortgage to A. B., of _____, to secure _____ dollars, payable [*here state the terms*], which mortgage was recorded in the office of the clerk of _____ county, on the _____ day of _____, _____, at _____ o'clock, and

minutes in the noon, in liber of mortgages, page ,¹ * and the sum of dollars interest [or, the sum of principal and dollars interest, making together the sum of dollars], is due on said mortgage on the day of , , the day of the first publication of this notice;² and,

WHEREAS, default has been made in the payment of the money secured by said mortgage, and no suit or proceeding having been instituted at law to recover the debt now claimed to be due upon said mortgage, or any part thereof: the said mortgage will be foreclosed by a sale of said premises by virtue of the power contained in the mortgage,³ which sale will be made by the subscriber, at public auction, at the Hotel,⁴ in , on the day of next, at o'clock in the noon.

The following is a description of said mortgaged premises [*here insert description*].⁵ [*Signature of mortgagee or attorney.*]

[*Date on the day of first publication.*]

1081. Another Form; The Whole Mortgage Being Due Upon Default in Interest.

[*As in the preceding form to the *, continuing thus:*] and, WHEREAS, it was in and by said mortgage expressly agreed, that should any default be made in the payment of the said interest or of any part thereof on any day whereon the same was payable as expressed in said mortgage, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth — that is to say, after the lapse of the said thirty days — the principal sum of dollars mentioned in said mortgage, with all arrearage of interest thereon, should, at the option of the said A. B., his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period limited in said mortgage for the payment thereof might not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding; and,

WHEREAS, said Y. Z. neglects and refuses to pay the interest which became due on the day of , , or any part thereof [except the sum of dollars, paid on account thereof]; and,

WHEREAS, more than thirty days have elapsed since said interest became due and payable, pursuant to the provisions of the said mortgage, and the undersigned has elected and hereby elects that the whole principal sum shall become and be due and payable immediately; and,

WHEREAS, there is due on said mortgage, at the date of the first publication of this notice, the principal sum of dollars, together with dollars interest thereon from the day of , , making alto-

¹The reference to the record of the mortgage should be accurate, though errors which would not mislead are disregarded; and it seems that stating the time and place, without naming the book and page, would be sufficient. *Judd v. O'Brien*, 21 N. Y. 186

²The amount due up to the day of first publication of the notice should be stated accurately; though if the data for a precise computation are given, it might be regarded as sufficient, if there was no bad faith in the omission to comply literally with the statute. *Jencks v. Alexander*, 11 Paige, 619.

³The notice should show that the purpose of the sale is to foreclose the mortgage, or what is equivalent, that the sale is had by virtue of a power contained in the mortgage. *Judd v. O'Brien*, 21 N. Y. 186.

⁴See note 1 on next page.

⁵The property should be distinctly designated. The better practice is to insert the description given in the mortgage. *Rathbone v. Clarke*, 9 Abb. Pr. 66, note.

presence of this deponent, affix the same in the proper book kept by said county clerk for the affixing thereon of notices of sale of the foreclosure of mortgaged premises. [Signature.]

Sworn [*etc., as in preceding form.*]

1085. Affidavit of Affixing Notice of Sale on the Outward Door of the Court House.

STATE OF _____, }
County of _____, } ss.

M. N., of _____, being duly sworn, says, that on the _____ day of _____, and at least twelve weeks prior [Here attach a printed copy of the notice.] to the time specified therein for the sale, he affixed a notice, of which the annexed printed notice is a copy, on the outward door of the building where the county courts are directed to be held in the county of _____, aforesaid, to wit, the City Hall in _____.

Sworn [*etc., as in Form 1083.*]

1086. Affidavit of Service of Copy of Notice of Sale.

STATE OF _____, }
County of _____, } ss.

M. N., of _____, being duly sworn, says, that on the _____ day of _____, at _____ [here specifying the place particularly], he personally served [here name the persons], with a notice of sale of which the annexed printed notice is a copy, by delivering a copy of said notice to each of them individually, and leaving the same with them [or, he served Y. Z. with a notice of sale, of which the annexed printed notice is a copy, by delivering a true copy of said notice to the wife [or, daughter, aged _____ years, or thereabouts], of the said Y. Z., at his dwelling-house in _____, he being at the time absent therefrom; or, he served Y. Z., with a notice of sale, of which the annexed printed notice is a copy, by depositing a copy of said notice in the post-office in _____, properly folded—and if inserted in an envelope add, and inclosed in a sealed envelope—and directed to him at his place of residence in _____], and that prior to such mailing he duly prepaid the postage on said notice [or, envelope]. [Signature.]

Sworn [*etc., as in Form 1083.*]

1087. Affidavit by the Auctioneer to the Fact of Sale.

STATE OF _____, }
County of _____, } ss.

M. N., of _____, being duly sworn, says, that he sold [Here attach a printed copy of the notice.] the premises [below described being a part of the premises] described in the annexed printed notice, by public auction, at the time and place of sale therein mentioned—to wit, on the _____ day of _____, at _____ o'clock in the _____ noon, at the [here designate the place]; and that C. D. then and there purchased the same, for the price of _____ dollars; he being the highest bidder, and that being the highest sum bidden for the same.

And this deponent further saith, that said sale was made in the daytime, and, in all respects, honestly, fairly, and legally conducted, according to his best knowledge and belief; and, also, that the said C. D. purchased the said premises fairly and in good faith, as he verily believes.

Sworn [etc., as in Form 1083].

[Signature.]

[Add description, if the sale was of a part of the land described in the notice.]

CHAPTER XXIX.

GIFTS.

A gift of personal property may be made by parol, without any written instrument, except in respect to such property as requires a writing in order to make a valid sale or transfer for pecuniary consideration. But the appropriate instrument for conveying by gift is an ASSIGNMENT or BILL OF SALE (see those chapters), in which affection or a nominal payment, such as one dollar, may be named as the consideration.

Delivery.—Where the subject-matter is capable of delivery, a delivery, actual or symbolical, is essential to constitute a valid gift by parol. There is no distinction, in this respect, between a gift between the living and one made in view of death. The possession, or some means of obtaining possession and control, must be transferred to the donee, or the title does not pass. The delivery need not be to the donee in person. A delivery to a third person to hold for the donee is sufficient. The making and delivering one's own promissory note as a gift, does not create a valid obligation, even when the note is given as a gift in view of death. But the holder of a note or other obligation made by a third person may give it away. After a gift has been thus executed, it cannot be retracted by the donor; although in cases of actual or constructive fraud, his creditors may set it aside. A gift in view of death, however, is revocable at the arbitrary will of the donor, if he survives; and this, notwithstanding the donee has been put in full possession of the subject of the gift.

A gift of land is to be made by deed acknowledged and recorded, as in other cases. (See the chapters on DEEDS and ACKNOWLEDGMENTS.) A nominal consideration may be named, or affection may be expressed to be the consideration, as in Form 826. Sometimes the conveyance is made in the form of a covenant to stand seized to uses, as in Form 766.

CHAPTER XXX.

GUARANTIES.

A GUARANTY is the warranty of some act or debt of another. In the commercial sense, it is an undertaking to answer for the payment of some debt or the performance of some contract by another person who is in the first instance liable to such payment or performance. It is distinguished from suretyship in that guaranty is a secondary and not a primary obligation. It is an undertaking that a debtor shall pay, whereas a surety undertakes that the debt will be paid.

A contract of guaranty not under seal requires a consideration to support it. If the original debt or obligation has accrued previous to the promise of guaranty, there must be a new consideration to sustain the guaranty; but when the original debt or obligation rests upon a good consideration, and if the promise of guaranty is made at the same time with or prior to the original debt or obligation this will support the promise of guaranty. Any benefit accruing to the one by whom the guaranty is given, or any injury suffered by the person receiving the same is regarded as a sufficient consideration. It may be said in general that a moral obligation will not support a promise of guaranty.

By the Statute of Frauds, every special promise to answer for the debt,

default, or miscarriage of another person is void, unless such agreement or some note or memorandum thereof be in writing and subscribed by the party to be charged therewith. This fourth section of the English Statute of Frauds (29 Charles II, c. 3), has been re-enacted with a slight modification throughout the United States. For the provisions in the state of New York, see Personal Property Law, §§ 30-44. Birdseye, C. & G. Cons. Laws, p 4188.

Generally, a guaranty is not negotiable. A continuing guaranty is where the parties intend the liability to extend to a succession of dealings or credits; otherwise the presumption is in favor of a limited liability and is called a non-continuing guaranty. A guaranty is not binding unless it is accepted and the guarantor has knowledge of the same. Any material variation of the principal's liability by an act of the party to whom a guaranty is given, discharges the guarantor, but no general rule can be laid down on this subject. A guarantor may be discharged in the same way as the liability under any other contract is discharged. How far failure to give notice of the default of the principal discharges the guarantor, the authorities of the various states differ. A strict construction is always to be applied to the interpretation of those contracts, and the equitable principle of substitution applies to them.

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1088. Guaranty of Payment of Note.

For value received, I hereby guarantee the prompt payment of the within note at maturity.¹ [Signature.]

[Date.]

1089. Guaranty of Payment of Bond.

IN CONSIDERATION of the sum of one dollar to me in hand paid by Y. Z., I hereby guarantee the prompt payment of the foregoing bond.²

WITNESS my hand [and seal], the day of .
[Signature, with or without seal.]

1090. Guaranty of Collectibility, Etc.

FOR VALUE received, I hereby guarantee that the within³ is good⁴ [or, collectible]⁵ [Signature.]

¹ An absolute guaranty of payment of a negotiable note renders the guarantor liable on default of the principal, and without proof of demand and notice. He is liable unless he can show that the omission of demand and notice has been the cause of injury to him.

² Where the guaranty of a mortgage was of "the payment and collection of the principal and interest money of the bond and mortgage within assigned,"— *Held*, that collection meant collection by foreclosure, and that the guarantor was not liable as a party to an action of foreclosure. *Baxter v. Smeek*, 17 How. Pr. 193.

³ Upon a guaranty of the collection "of the within note," the guarantor is not liable, unless the guarantee has used due diligence, not only against the makers but also as against such as were indorsers at the time of making the guaranty.

⁴ A guaranty that a note is good, is not a guaranty of payment on demand, but that the maker is solvent, and the amount can be collected by due course of law.

⁵ A guaranty of the collectibility of a note is a conditional promise, binding only in case of diligence in prosecuting the debt. And if the condition be not performed by the

1091. Guaranty of Rent.

IN CONSIDERATION of the letting of the premises above described [or, for value received], I guarantee the punctual payment of the rent [and performance of the covenants] in the above agreement mentioned to be paid and performed by said lessee, without requiring any notice of nonpayment or non-performance, or proof of notice or demand being made, whereby to charge me therefor. [Signature.]

[Date.]

1092. Guaranty Given to Stop Legal Proceedings.

A. B. & Co. having, at my request, agreed to discontinue the proceedings instituted by them against Y. Z., to enforce payment of dollars due by him to them, I hereby, in consideration thereof, guarantee the payment of that sum, and of costs, within days from date.

[Date.]

[Signature.]

1093. Guaranty of Performance of Contract.

IN CONSIDERATION of the sum of one dollar to me in hand paid by Messrs. A. B. & Co., the receipt whereof is hereby acknowledged, I do hereby guarantee, promise, and agree to and with them, that the above-named M. N. will well and faithfully perform and fulfil everything by the foregoing agreement on his part and behalf to be performed and fulfilled, at the times and in the manner above provided. And I do hereby expressly waive and dispense with any demand upon the said M. N., and any notice of any nonperformance on his part. [Signature.]

[Date.]

1094. Guaranty of Notes, Etc., Given to a Bank.

The National Bank of the City of New York. New York, , .
FOR and in consideration of one dollar, to us in hand paid by the National Bank of the city of New York, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, we hereby guarantee to said bank, or its successor or successors, or assigns, payment of the bills, notes, checks, or other evidences of debt named herein, together with all legal or other expenses of or for collection; demand of payment, protest, and notice of protest waived.

| Date. | Name of payer. | Name of Item. | Time to run. | Date due. | Amount. |
|-------|----------------|---------------|--------------|-----------|---------|
| | | | | | |

[Signature.]

guarantee, the guarantor is under no moral obligation to pay the note, and his liability cannot be revived, even by an express promise. And in order to charge the guarantor, it must be proven that the parties to it were not good, and that payment could not be enforced from them.

Under a simple guaranty of collection, the creditor is not bound to notify the guarantor of his attempt and failure to collect the debt before suing on the guaranty. Unless the guarantor stipulates for notice, it is not to be implied.

If the condition of a guaranty is, that the creditor shall proceed by "due course of law" for the collection of the debt, it is enough that he prosecutes all ordinary legal measures, with good faith and reasonable diligence, in point of time; the loss of a term does not of necessity discharge the guarantor. What is laches depends upon the circumstances of the case.

A guaranty, written beneath a lease, and stating that it is made "in consideration of the demise of the premises above mentioned," sufficiently expresses a consideration.

CHAPTER XXXI.

GUARDIAN AND WARD.

A **GUARDIAN** is one intrusted by law with the interests of another who is disqualified from acting for himself, and who is hence called a ward. There are different kinds of guardians. They are treated by the courts as trustees, and are usually required to give a bond for the faithful performance of their duties, except in some cases when they are appointed by will. Guardianship in the United States differs considerably from that in England, and is controlled in a great measure by local statutes. For these provisions see the statutes of the several states. Guardians are appointed either by the parents of an infant or by the courts. Unfitness for office, misconduct, irregularity of appointment may be reasons for removing guardians appointed by the court. The powers and duties of a guardian relate either to the person of the ward, or to his estate, or to both the person and the estate. As to his powers over the person, he has generally a right to the custody of the ward's person; he is bound to support and educate the ward, and has, generally, the powers and duties of a parent. As guardian of the estate, he is bound to act for the interests of the ward and not of his own, and he will be held strictly accountable for the careful management of all property. He is not authorized to convert personal property into real, and *vice versa*; but may manage and dispose of personal property at his own discretion. He may lease real estate, but generally cannot sell or mortgage such property without leave of the court. Whenever the guardianship is terminated, the ward or his legal representative may call upon the guardian and compel him to account, and the ward may disprove fraudulent transactions of the guardian.

The guardianship is a strictly personal trust and cannot be transferred to another person.

In general, the father is guardian by nature, until the child arrive at the age of twenty-one; but by common law this is a guardianship of the person only, and gives no right or control over the child's property, real or personal. But by statute in New York and some other states, where an infant has real property, the father, or if he has no father, the mother, or if none, the nearest relative of full age and of capacity, males being preferred, is guardian, and has the custody of the land, and is entitled to the profits, for the benefit of the ward. But his authority is superseded whenever a guardian is appointed by deed or will, or by the surrogate.

The forms for voluntary appointment of guardians are given in the chapter of **APPOINTMENTS**.

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839. Petition for Appointment of a Guardian of a Minor of the Age of Fourteen Years.

To HONORABLE M. N., SURROGATE OF THE COUNTY OF _____ :

THE PETITION of A. B., of the city of _____, respectfully shows, that your petitioner is a resident of the county of _____, and is a minor over fourteen years of age, and was _____ years of age on the _____ day of _____ last past.

That your petitioner is entitled to certain property and estate [*briefly designating it*], and that to protect and preserve the legal rights of your

petitioner, it is necessary that some proper person should be duly appointed the guardian of his person and estate during his minority.

WHEREFORE, your petitioner nominates, subject to the approbation of the surrogate, C. B., of the city of _____, merchant, to be such guardian, and prays his appointment accordingly, pursuant to the statute in such case made and provided. [Signature.]

[Date.]

1096. Consent to be Annexed.

I, C. B., of the city of _____, merchant, hereby consent to be appointed the guardian of the person and estate of the above-named minor during his minority. [Signature.]

[Date.]

1097. Affidavit as to Property to be Annexed.

COUNTY OF _____, ss.

O. P., of the city of _____, being duly sworn, says, that he is acquainted with the property and estate of the above-named minor, and that the same consists of real and personal estate; and that the personal estate of said minor does not exceed the sum of _____ dollars, or thereabouts; and that the annual rents and profits of the real estate of said minor do not exceed the sum of _____ dollars, or thereabouts. [Signature.]

Sworn to before me, this

day of _____,

[Signature of officer.]

1098. Bond of Guardian.

KNOW ALL MEN BY THESE PRESENTS, that we, C. B., of the city of _____, merchant, and E. F., of the same city, physician, are held and firmly bound unto A. B., of the city of _____, a minor over fourteen years of age, in the sum of _____ dollars, lawful money of the United States, to be paid to the said minor, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the _____ day of _____, one thousand nine hundred and _____.

THE CONDITION of this obligation is such, that if the above-bounden C. B. shall and will faithfully, in all things, discharge the duty of a guardian to the said minor, according to law, and render a true and just account of all moneys and property received by him, and of the application thereof, and of his guardianship in all respects, to any court having cognizance thereof, when thereunto required, then this obligation to be void; otherwise, to remain in full force and virtue. [Signatures and seal.]

Sealed and delivered in the presence of

[Signatures of witnesses.]

1099. Affidavit of Sufficiency of Surety in Bond.

COUNTY OF _____, ss.

E. F., the within-named surety, being duly sworn, says, that he resides at No. _____ street, in said city, and is worth the sum of _____ dollars over and above all his just debts, liabilities, and responsibilities, and property exempt by law from levy and sale under an execution. [Signature.]

Sworn [etc., as in Form 1097].

1100. Letters of Guardianship.

THE PEOPLE OF THE STATE OF _____, TO C. B., OF THE CITY OF _____, SEND
GREETING:

WHEREAS an application, in due form of law, has been made to our surrogate of the county of _____, to have you, the said C. B., appointed the guardian of the person and estates of A. B., a minor, residing in the city of _____, of the age of fourteen years; and,

WHEREAS, the said C. B. has agreed and consented to become such guardian, and has duly executed and delivered a bond, pursuant to law, for the faithful discharge of his duty as such guardian, and we being satisfied of the sufficiency of said bond, and that said C. B. is a good and reputable person, and is in every respect competent to have the custody of the person and estate of said minor:

NOW, THEREFORE, we do, by these presents, allow, constitute, and appoint you, the said C. B., the general guardian of the person and estate of said minor during his minority, hereby requiring you, the said guardian, to safely keep the real and personal estate of said minor, which shall hereafter come to your custody, and not suffer any waste, sale, or destruction of the same, but keep up and sustain his lands, tenements, and hereditaments, by and with the rents, issues, and profits thereof, or with such other moneys belonging to him as shall come to your possession, and to deliver the same to him when he becomes of full age, or to such other guardian as may be hereafter appointed, in as good order and condition as you receive the same; and also to render a just and true account of all moneys and property secured by you, and the application thereof, and of your guardianship in all respects, to any court having cognizance thereof, when thereunto required.

IN TESTIMONY WHEREOF, we have caused the seal of office of our said surrogate to be hereunto affixed, at the city of _____, the

[SEAL.] day of _____, in the year of our Lord one thousand nine hundred and _____, and of our independence the _____.

[Signature of surrogate.]

1101. Petition for the Appointment of a Guardian of a Minor Under the Age of Fourteen.

TO HONORABLE M. N., SURROGATE OF THE COUNTY OF _____:

THE PETITION of C. B., of the city of _____, merchant, respectfully shows:

I. That your petitioner is a paternal uncle of A. B., a minor; that said minor is a resident of the county of _____, and is under fourteen years of age, and was _____ years of age on the _____ day of _____ last past.

II. That the only relatives of said minor residing in the county of _____, are E. F., his maternal grandfather, G. F. and I. F., his maternal uncles, and D. B. and your petitioner, his paternal uncles.

III. That said minor is entitled to personal property [briefly designating it] to the value of about _____ dollars, as your petitioner is informed and verily believes, and that he is also seized of certain real estate [briefly designating it], the annual rents and profits whereof do not exceed the sum of _____ dollars; and that to protect and preserve the legal rights of said minor, it is necessary that some proper person should be duly appointed the guardian of his person and estate.

WHEREFORE, your petitioner prays, that you will appoint him, your petitioner, the guardian of the person and estate of said minor, until he shall arrive at the age of fourteen years, and until another guardian shall be appointed. [Signature.]

[Date.]

1102. Verification of Petition.

COUNTY OF _____, ss.

C. B., of the city of _____, the above petitioner, being duly sworn, says, that the foregoing petition is true, to his knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. [Signature.]

Sworn [etc., as in Form 1097].

1103. Consent to be Annexed.

I, C. B., of the city of _____, merchant, do hereby consent to become the guardian of the above-mentioned minor, pursuant to the prayer of the foregoing petition. [Signature.]

[Date.]

1104. Petition by Guardian for Allowance Out of Ward's Estate.

TO THE JUSTICES OF THE SUPREME COURT OF _____ :

THE PETITION of C. B., guardian of A. B., an infant, respectfully shows:

I. That your petitioner was appointed general guardian of said minor, by an order of this court, made the _____ day of _____, _____, and has given the security required by the said order.

II. That the property of the said minor consists of [describe it, stating the value].

III. That the said minor is the child of your petitioner, is _____ years of age, and has been supported, educated, and maintained by your petitioner, out of his own funds, up to the time of the date of the aforesaid order, and subsequently, up to or about the _____ day of _____, _____.

IV. That your petitioner, since the date last aforesaid, has been unable, and is now unable, to support, maintain, and properly educate the said minor, out of his own funds, in consequence of failure in business, and losses in business.

V. That your petitioner has, for the last _____ years, resided at _____, in _____, and the said daughter has resided in _____; that the expense of the support, maintenance, and education of the said minor, since the _____ day of _____, _____, has been about the sum of _____ dollars per annum, which your petitioner is wholly unable to defray out of his own funds.

WHEREFORE, your petitioner prays that an allowance may be made to him for the maintenance and education of the said minor, out of the interest accrued and to accrue upon the said _____, at the rate of _____ dollars per annum, to date from the _____ day of _____, in the year _____, and to be continued until the further order of this court. [Signature.]

[Add verification, as in Form 1097].

CHAPTER XXXII.

HIGHWAYS.

HIGHWAYS are roads or streets and bridges, laid out or erected by the public, or by others, and dedicated or abandoned to the public.

Roads recorded as highways, according to law, and any roads used as such for a period of twenty years, are highways. By the statutes of New York, whenever any corporation owning a toll-bridge, or a turnpike or plankroad, is dissolved or discontinues the road, the bridge or road becomes a highway. Transportation Corporations Law, § 149; Birdseye, C. & G. Cons. Laws, p. 6352.

By taking or accepting land for a highway, the public acquires only the right of way, and the incidents necessary to enjoying and maintaining it, subject to the regulation of the towns. All trees within the highway, except only such as are requisite to make or repair the road or bridges, on the same land, are for the use of the owner or occupant of the land.

This whole subject, however, and the mode of proceeding to lay out, work, alter, and close highways, is so fully regulated by the statutes, and there are so many peculiar local systems in the various states, that the statute-book is a safer guide than any statement which such a work as this could give.

In New York (Highway Law, § 11, Birdseye, C. & G. Cons. Laws, p. 2171), three commissioners of highways are appointed by governor with consent of senate. They constitute the state commission of highways. The board of supervisors of a county may appoint a county superintendent. (Ibid., § 30.) In each town a town superintendent of highways is elected. (Ibid., § 40.) If board of supervisors of a county adopt labor system for removing snow, the town superintendent may divide the town into highway districts and file a description thereof in the office of the town clerk. (Ibid., §§ 78, 79.) A copy of the lists of persons and corporations assessed shall be prepared by the town superintendent and filed in the office of the town clerk. (Ibid., § 80.) If they do not, the commission shall place the county in a district with other counties and appoint a district superintendent. (Ibid., § 31.) Every male adult shall be assessed at least one day, except honorably discharged soldiers and sailors who have lost an arm or leg in the United States service, or who are unable to perform manual labor, by reason of injuries received in such service, members of fire companies within such town, persons seventy years of age, clergymen, and priests of every denomination, paupers, idiots, and lunatics. The residue of such labor shall be apportioned on the real and personal property in the town. (Ibid., § 79.)

Any nonresident owner of unoccupied lands may, within thirty days after the assessment, appeal therefrom to the county judge, who shall within twenty days thereafter hear and determine such appeal on a notice to the highway commissioners. (Ibid., § 81.)

If the expense of repairing or rebuilding a bridge shall exceed \$500, it shall be done under a written contract approved by the town board. (Ibid., § 92.)

The statutory provisions relating to the proceedings to lay out, alter, or discontinue highways (Ibid., §§ 190-240), are briefly as follows:

Whenever land is dedicated for highway purposes, the town superintendent may, with the consent of the town board, with or without a written application therefor, make an order laying out such highway without expense to the town, and a survey of such highway is to be incorporated in the order. The order containing the survey, with a release of the land from the owner, is to be filed and recorded in the town clerk's office.

On a written application, and with the written consent of the town board, the town superintendent of highways may make an order laying out or altering a highway in their town, or discontinuing it, if useless. Such application, consent, order, and also a release of all damages from the owner of

lands taken or affected thereby, and a survey of the proposed highway is to be filed and recorded in the town clerk's office. The district or county superintendent must make the survey or cause it to be made.

Any person assessable for highway taxes may apply to the town superintendent of highways to alter or discontinue a highway, or to lay out a new highway in such town. If the land for the proposed highway has not been dedicated, and if the owners of the land have not consented that it be taken for highway purposes, the person applying must, within thirty days, petition the county court for the appointment of three commissioners to determine on the necessity of the proposed highway or the uselessness of the highway proposed to be discontinued, and to assess the damages. The county court is to appoint three disinterested freeholders as commissioners. The commissioners shall fix a time to hear the parties interested. At least eight days' notice must be given by the applicant by posting up in not less than three places in the town a notice specifying the highway proposed to be laid out, altered, or discontinued, and the tracts of land through which it runs, and the time and place of the meeting of the commissioners. Such notice must also in like time be personally served on the owner and occupant of the lands over which the highway is to pass, if he is a resident of that town, or by leaving the same with a person of mature age; otherwise service must be made by mailing a copy to such owner and occupant, if his post-office address is known or can be ascertained by the applicant on reasonable inquiry.

The commissioners must personally examine the highway and hear any reasons that may be offered for or against the laying out, altering, or discontinuing of such highway, and assess all damages by reason thereof. They may adjourn the proceedings, issue subpoenas, or administer oaths. They shall keep a minute of their proceedings and reduce to writing the evidence taken before them relating to the assessment of damages. They must make duplicate certificates of their decision, and file one in the town clerk's office, and the other, with the evidence taken before them, in the county clerk's office. Within thirty days thereafter, any party interested may apply to the court for an order confirming, vacating, or modifying such decision. The town superintendent of highways has no jurisdiction to lay out a road, without the owner's consent, or an order of the county court, through orchards of four years' growth or more, or through a garden cultivated as such for four years or more, or a grape vineyard of one or more years' growth and used as such in good faith, or through buildings or other erections for the purpose of trade and manufacture. Such order shall be made on the certificate of the town superintendent, showing that the public interest will be greatly promoted thereby, and that commissioners have certified its necessity. Upon eight days' notice of hearing, the county court may order the highway to be laid out, and such order of the county court is then presented to the appellate division of the supreme court in the judicial department in which the land is situated, and after such order of the county court has been confirmed thereby, the town superintendent of highways shall then lay out such highway as in other cases.

To create a private road by statutory provisions, an application must be made to the town superintendent of highways, specifying the width and location of the road, its courses and distances, and the names of the owners and occupants of the land through which it is proposed to be laid out. Thereupon the town superintendent must designate a day and a place, at which a jury will be selected to determine upon the necessity of such road, and to assess the damages. The applicant must serve a notice of the time and place with a copy of the application on each owner or occupant who resides in the same town, or if he be absent, by leaving the same at his residence; nonresident owners may be served by mail. If the owners are infants, service may be made on their parents or guardians. At the time and place designated in the notice, the town superintendent shall present a list of names of thirty-six resident freeholders, not related to the applicant, owner, or occupant, and not interested in the lands to be used. The landowners or occupants may strike from such list not more than twelve names, and the applicant may strike off a like number. The first twelve names remaining on the list shall

constitute the jury, who shall be summoned by the town superintendent to meet at a convenient time and place. After taking the oath, the jury shall view the premises and hear the evidence produced by the parties. They shall assess the damages and deliver their verdict in writing to the town superintendent, who shall file and record, in the town clerk's office, the verdict of the jury, and the application, and a certificate of the town superintendent that the road is laid out. The damages assessed by the jury shall be paid before the road is opened or used. Within thirty days after the decision of the jury, the same may be brought up by motion to confirm, vacate, or modify before the county court. When the town superintendent of highways of any town or like officers of a village or city shall differ with the town superintendent of highways of other towns or other such officers, they shall meet on five days' notice in writing within some one of such towns, villages, or cities to make their determination in writing upon the subject of their differences. If they cannot agree, they, or either of them, may certify the fact of their disagreement to the county court of the county, if the proposed highway is all in one county, or if in different counties, to the supreme court. The court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town, village, or city where the highway is to be located, or if between two counties, then freeholders of another county. The commissioners, upon due notice to all persons interested, shall view the proposed highway, administer all necessary oaths, take the evidence of the parties, and decide all questions arising on the hearing as to the laying out, etc., of the highway, and if they decide to open or alter a highway, they shall also assess the damages to the individual owners, and shall report the evidence and the decision to the court. The court may confirm, modify, or set aside said report, or a part of it, and all the papers in the proceedings are to be filed in the county clerk's office of each county where the highway is to be located. An application to lay out a highway upon the line between two or more towns shall be made to the town superintendent of each town, and they shall act together, and upon laying out such highway, the expense of opening, working, and keeping the same in repair shall be borne equally by such towns.

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I. ASSESSMENT OF LABOR FOR SNOW REMOVAL.

1105. Appeal to the County Judge, by Nonresident Owner of Lands, or His Agent, from the Assessment by Town Superintendent.

NOTICE is hereby given that the undersigned, A. B., a nonresident owner [or, agent of C. D., a nonresident owner] of lands in the town of _____, in the county of _____, who considers himself aggrieved in the assessment of labor (for the removal of obstructions caused by snow in the highways and for the prevention of such obstructions), by the town superintendent of highways of said town, upon the following described lands, to wit [here insert the description as in the list or statement made by the commissioners], hereby appeals from the assessment of said town superintendent to the county judge of said county of _____.

[Date.]

[Signature.]

1106. Notice by Owner or his Agent to the Town Superintendent of the Preceding Appeal.

To [naming him] TOWN SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF _____ :

You are hereby notified, that considering myself aggrieved by your assessment of labor for

and for the prevention of such obstructions, upon the land owned by me in said town, I have this day appealed to the county judge of the county of _____, who will hear said appeal on the _____ day of _____, at _____ o'clock in the _____ noon, at _____.

[Date.]

[Signature.]

II. PROCEEDINGS TO LAY OUT, ALTER, OR DISCONTINUE ROADS.

1107. Application to Lay Out Highway upon Dedication.

TO THE TOWN SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF _____, IN THE COUNTY OF _____ :

The undersigned, liable to be assessed for highway taxes in the town of _____, hereby applies to you to lay out a highway in said town, commencing [*describe the proposed highway*], which proposed highway will pass through the lands of R. S. and T. W., who consent to the laying out of such highway.

Dated this _____ day of _____, _____.

L. M.

1108. Dedication of Highway.

I, R. S., of the town of _____, county of _____, N. Y., for value received, hereby dedicate to the town of _____, aforesaid, a strip of land across my premises, in said town, for the purpose of a highway, described as follows [*here describe premises dedicated*]. And I also hereby release said town from all damages by reason of the laying out and opening of said highway.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of _____, _____.

[Acknowledgment.]

R. S. [SEAL.]

1109. Order Laying Out Highway.

With the written consent of the town board of the town of _____, in the county of _____, on the _____ day of _____, _____, to the laying out of a highway in said town, hereinafter described, and on the written application of L. M., a person liable to be assessed for highway taxes in said town, and a release from the owners of the land through which the highway is proposed to be opened, having been given, it is ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: Beginning [*here insert the survey*], and the highway shall be _____ rods in width.*

Dated this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1110. Application to Lay Out Highway on Consent of Town Board.

TO THE TOWN SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF _____, IN THE COUNTY OF _____ :

The undersigned, liable to be assessed for highway taxes in the town of _____, hereby applies to you to lay out [*or, alter*] a highway in said town, commencing [*describe the proposed highway*], which proposed highway will pass through the lands of R. S. and T. W., who consent to the laying out [*or, altering*] of such highway.

Dated this _____ day of _____, _____.

L. M.

1111. Consent of Town Board.

The undersigned, the town board of the town of _____, in the county of _____, hereby consent that the town superintendent of highways of said town make an order laying out [or, altering] the proposed highway described in the application of L. M., pursuant to section 191 of the Highway Law.

Dated this _____ of _____, _____.

[Signatures of members of the town board.]

1112. Release of Owners.

I, R. S., of the town of _____, county of _____, N. Y., for and in consideration of the sum of _____ [not exceeding \$100], hereby consent that a highway be laid out and opened [or, altered] across my premises in the town of _____, county of _____, pursuant to the application of L. M., dated the _____ day of _____, _____, and release said town from all damages by reason of laying out and opening [or, altering] such highway through my premises.

Dated this _____ day of _____, _____.

R. S.

1113. Order on the Foregoing.

With the written consent of the town board of the town of _____, in the county of _____, on the _____ day of _____, 1____, to the laying out [or, altering] of a highway in said town hereinafter described, and on the written application of L. M., a person liable to be assessed for highway taxes in said town, and a release from the owners of the land through which the proposed highway is to be opened, the consideration to any one claimant not exceeding \$100, and to all the claimants not exceeding \$500, it is ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: [here insert survey]. And the highway shall be _____ rods in width.

Dated this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1114. Application by Individual to Lay Out Highway.

TO THE TOWN SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF _____, IN THE COUNTY OF _____ :

The undersigned, liable to be assessed for highway taxes in your town, hereby applies to you to lay out a highway in said town, commencing [describe the proposed highway], which proposed highway will pass through the lands of R. S. and T. W., [who consent to the laying out of the highway, or as the case may be].

Dated this _____ day of _____, _____.

L. M.

1115. Same, to Alter Highway.

[As in preceding form to *, and from thence, as follows:] to alter the highway leading from _____ to _____, in said town, as follows:

[Insert particular description of the proposed alteration by courses and distances.] The proposed alteration passes through the lands of R. S. and T. W. [who consent to the proposed alteration, or as the case may be].

Dated this _____ day of _____, _____.

L. M.

1116. Same, to Discontinue.

[As in Form No. 1114 to *, and from thence as follows:] to discontinue the old highway, beginning [insert description], on the ground that said highway has become useless.

Dated this day of , .

L. M.

1117. Application for Commissioners to Determine Necessity of Proposed Highway.

COUNTY COURT.— COUNTY.

In the Matter of the Application of , to Lay Out [Alter or Discontinue] a Highway in the Town of , and the Assessment of Damages Therefor.

TO THE COUNTY COURT OF COUNTY:

The petition of , of the town of , county of , respectfully shows: that your petitioner is a person liable to be assessed for highway taxes in the town of , county of ; that on the day of , , he presented an application in writing to the town superintendent of highways of said town, as follows: [Insert copy of the application to the commissioners]. That said application was made in good faith; that the town superintendent of highways has not laid out [altered or discontinued] said highway pursuant to section 191 of the Highway Law.

WHEREFORE, your petitioner prays that three commissioners be appointed pursuant to section 194 of the Highway Law, to determine upon the necessity of the proposed highway [or, of altering the said highway, or upon the uselessness of the said highway], and to assess the damages by reason of laying out and opening [or, altering or discontinuing] such highway.

Dated this day of , .

[Signature.]

[Add usual statutory verification.]

1118. Appointment of Commissioners.

At a term of the county court of the county of , held at , in the , in and for said county.

Present—Hon. E. E., county judge.

In the Matter of the Application of , to Lay Out [Alter or Discontinue] a Highway in the Town of , and the Assessment of Damages Therefor.

On reading and filing the petition of , of the town of , in said county, dated the day of , , praying for the appointment of three commissioners, pursuant to section 194 of the Highway Law, to certify

as to the necessity of laying out and opening [altering or discontinuing] a highway, beginning [*insert the description*], and to assess the damages by reason of laying out [altering or discontinuing] such highway, it is hereby ordered that S. S., G. G., and J. J., of the town of _____, said county, be, and they are hereby appointed such commissioners.

1119. Notice of Appointment.

To S. S., G. G., AND J. J.:

Take notice, that you, and each of you, have been duly appointed commissioners, by an order of the county court, a copy of which is hereto annexed, and you are required to fix a time and place at which you will all meet to hear the town superintendent of highways and all other persons interested in the highway mentioned in the said order.

Dated this _____ day of _____, _____ . L. M.

1120. Notice of Meeting of Commissioners.

NOTICE is hereby given that the undersigned has made application to the town superintendent of highways of the town of _____, in the county of _____, for the laying out [altering or discontinuing] of a highway in said town, commencing [*here insert description as in application*], which proposed highway [or, alteration] will pass through the lands of [*describe who*], and by an order of the county court, dated the _____ day of _____, S. S., G. G., and J. J., were appointed commissioners to certify as to the necessity of said proposed highway [or alteration or as to the uselessness of said highway], and to assess the damages by reason of the laying out and opening [alteration or discontinuance] of such highway; and that said commissioners will all meet at _____, in said town, on the _____ day of _____, at _____ o'clock in the _____ noon, to examine the proposed highway [or, the highway], and hear the town commissioner of highways and all others interested therein, and to assess the damages if such highway be determined to be necessary [or, is altered or discontinued].

Dated this _____ day of _____, _____ . L. M.

1121. Affidavit of Service of Foregoing Notice.

STATE OF _____, }
County of _____, } ss.

L. M., being duly sworn, says that he caused notices in writing, of which the within is a copy, to be posted up at _____, at _____, and _____, three public places in the town of _____, said county, on the _____ day of _____, 1 _____, and that he served a like notice on [*name all the owners and occupants of the lands through which the highway is proposed to be laid out, altered, or discontinued*], on the _____ day of _____, _____, by [*state how served*], and that said notices were posted at the respective places, and served on the respective persons herein named, at least eight days before the time specified therein for the meeting of said commissioners.

Subscribed and sworn to before me, _____ L. M.
this _____ day of _____, _____ .

G. H.,
Justice of the Peace.

1122. Subpoena to Attend Before Commissioners.

THE PEOPLE OF THE STATE OF NEW YORK TO L. L. AND O. O.:

You and each of you are hereby commanded to be and appear before us, commissioners appointed by the county court of county, at the , in the town of , on the day of , , at o'clock in the noon, to testify and give evidence in the matter of laying out [altering or discontinuing] a highway, and assessing the damages therefor, in the town of , then and there to be heard and determined.

Dated this day of , . [Signatures of commissioners.]

1123. Oath of Witnesses.

You do solemnly swear that the evidence you shall give touching the necessity of laying out [altering or discontinuing] the highway in question, and assessing the damages therefor [or, as the case may be], shall be the truth, the whole truth, and nothing but the truth, so help you God.

1124. Certificate of Commissioners Approving Application.

The undersigned, by an order of the county court of county, dated the day of , on the application of , having been appointed commissioners to certify as to the necessity of laying out and opening [or, altering or as to the uselessness of] a highway in the town of , in said county, beginning [describe highway, as in the application] which proposed highway [or, highway] crosses the lands of [name the persons], and to assess the damages by reason thereof:

Now, THEREFORE, we the said commissioners, having given due notice of the time and place at which we would meet, and all having met at , in said town, on the day of , , pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service and posting of the notices by the applicant, pursuant to section 195 of the Highway Law, having viewed the proposed highway [or, alteration, or, highway proposed to be discontinued], and the lands through which it is proposed to be laid out and opened [altered or discontinued], and having heard all the allegations of the commissioners of highways and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify, that in our opinion the highway [or, alteration] is necessary [or, the highway is useless]; and we have assessed the damages required to be assessed by reason of laying out and opening [altering or discontinuing] such highway as follows:

The damages of N. N. at \$; the damages of W. W. at \$.

Dated this day of , . [Signatures of commissioners.]

1125. Same, Denying Application.

The undersigned, by an order of the county court of county, dated the day of , , on the application of , having been appointed commissioners to certify as to the necessity of laying out and opening [or, altering or as to the uselessness of] a highway in the town of , in said county, beginning [describe highway, as in the application], which proposed highway [or, highway] crosses the lands of [name the persons], and to assess the damages by reason thereof:

Now, THEREFORE, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at , in said town, on the day of , pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service and posting of the notices by the applicant, pursuant to section 195 of the Highway Law, having viewed the proposed highway [or, alteration, or, highway proposed to be discontinued], and the lands through which it is proposed to be laid out and opened [altered or discontinued], and having heard all the allegations of the commissioners of highways, and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify, that in our opinion such highway [or, alteration] is unnecessary [or, such highway is not useless].

Dated this day of, . [Signatures of commissioners.]

1126. Notice of Motion to Confirm Decision.

COUNTY COURT OF COUNTY:

In the Matter of the Application of , to Lay Out [Alter or Discontinue] a Highway in the Town of , and the Assessment of Damages Therefor.

To N. N. AND W. W.:

Take notice, that an application will be made to this court at a term thereof, to be held at the , in the of , on the day of , , for an order confirming the decision of the commissioners in the above-entitled matter, which decision is dated the day of , , and for such other and further relief as to the court may seem proper; that said application will be made upon said decision, and upon the affidavits and papers, with copies of which you are herewith served.

Dated this day of , . [Signature.]

1127. Order Confirming Decision.

At a term of the county court, held at the , in the of , on the day of , . Present.—Hon. E. E., county judge.

In the Matter of the Application of , to Lay Out [Alter or Discontinue] a Highway in the Town of , and the Assessment of Damages Therefor.

On reading and filing the decision of the commissioners, S. S., G. G., and J. J., in the above-entitled matter, dated the day of , , by which it appears [state substance of decision], with proof of due service upon N. N. and W. W., of notice of this application, and [state other papers],

and on motion of A. D., counsel for _____, after hearing S. B., counsel for N. N. and W. W., opposed, and on reading [*name the papers*], it is hereby ordered that the said decision be and the same is hereby confirmed.

E. E.,
County Judge.

1128. Certificate on Order Confirming Decision, Etc.

WHEREAS, _____ did present to me, as town superintendent of highways of the town of _____, in the county of _____, a written application, dated the day of _____, to lay out a highway in said town; and,

WHEREAS, commissioners were appointed by the county court of said county, pursuant to section 84 of the Highway Law, and after having duly met, certified that such proposed highway was necessary and proper, and should be laid out and opened, and assessed the damages therefor; and the said court having confirmed the decision of said commissioners [or, no motion having been made to the county court to confirm, vacate, or modify such decision], which said application, orders, and certificate [or, other papers] were duly filed in the office of the town clerk of said town, to which reference is here made:

NOW, THEREFORE, I, the undersigned, town superintendent of highways of said town, pursuant to section 190 of the Highway Law, do hereby lay out such highway as so applied for and ordered, whereof a survey has been made, as follows: Beginning [*here insert survey bill*], and the highway is to be _____ rods in width.

Dated this _____ day of _____, _____.

[*Signature of town superintendent of highways.*]

1129. Notice to Vacate, Etc., Decision.

COUNTY COURT.— _____ COUNTY.

| |
|---|
| <p>In the Matter of the Application of _____, to Lay Out [Alter or Discontinue] a Highway in the Town of _____, and the Assessment of Damages Therefor.</p> |
|---|

To N. N. AND W. W.:

Take notice that an application will be made to this court at a _____ term thereof, to be held at the _____, in the _____ of _____, on the _____ day of _____, for an order vacating [modifying or correcting, in the following particulars, *stating them*], the decision of the commissioners in the above-entitled matter, which decision is dated the _____ day of _____, with costs on this motion, and such further relief as the court may deem proper. That such application will be made upon said decision and the affidavits and papers, with copies of which you are herewith served.

Dated this _____ day of _____, _____.

L. M.

1130. Order Vacating, Etc., Decision.

At a term of the _____ county court held at the _____, in the _____ of _____, on the _____ day of _____, _____.

Present.—Hon. E. E., county judge.

In the Matter of the Application of _____, to Lay Out [Alter or Discontinue] a Highway in the Town of _____, and the Assessment of Damages Therefor.

On reading and filing the decision of the commissioners, S. S., G. G., and J. J., in the above-entitled matter, dated the _____ day of _____, by which it appears [*state the substance of decision*], with proof of due service upon N. N. and W. W., of notice of this application, and [*state other papers*], and on motion of A. D., counsel for _____, after hearing S. B., counsel for N. N. and W. W., opposed, and on reading [*name the papers*], it is hereby ordered that the said decision be and the same hereby is vacated [or modified or corrected] as follows: *State how*; [or, that a new hearing be had before the same or other commissioners to be named herein], with \$ _____, costs of this motion to _____ against _____.

E. E.,
County Judge.

1131. Consent of Owner to Lay Out Highway Through Certain Lands.

WHEREAS, L. M., has made application in writing to the town superintendent of highways of the town of _____, in the county of _____, dated the _____ day of _____, to lay out a highway in said town, beginning at [*insert description*], and which said highway will pass through my orchard:

Now, THEREFORE, I do hereby consent that such highway be so laid out, opened, worked, and used through my said orchard; but this consent shall not be construed as a waiver or release of my claim for damages, by reason thereof.

Dated this _____ day of _____, _____ T. W.

1132. Certificate of Town Superintendent of Highways on Consent of Owners to Lay Out Highway, Etc.

WHEREAS, L. M. did, on the _____ day of _____, _____, present to me as town superintendent of highways of the town of _____, in the county of _____, a written application to lay out a highway in said town, passing through an orchard of T. W., of the growth of four years or more, and the said T. W. having consented that, such highway be so laid out:

Now, THEREFORE, I, the undersigned, town superintendent of highways, pursuant to section 200 of the Highway Law, do hereby lay out said highway, as so applied for, whereof a survey has been made as follows: Beginning [*insert survey bill*], and the highway is to be _____ rods in width.

Dated this _____ day of _____, _____.

[Signature of town superintendent or highways.]

1133. Certificate as to Highway to be Laid Out Through Certain Lands.¹

COUNTY COURT.— COUNTY.

In the Matter of the Application
of L. M. to Lay Out a Highway
in the Town of , and the
Assessment of Damages There-
for.

To THE COUNTY COURT OF COUNTY:

I, the undersigned town superintendent of highways of the town of , in said county, hereby certify that on the day of , L. M., who is liable to be assessed for highway taxes in said town, made a written application to me, as such town superintendent, to lay out a highway in said town, passing through an orchard of T. W., of the growth of four years or more, pursuant to section 200 of the Highway Law, as follows: [*insert a copy of the application*]. And that the said T. W., does not consent thereto; that the following proceedings were had upon such application: [*insert a history of the proceedings up to and including the decision of the commissioners appointed by the courts*]. I further certify that the public interest will be greatly promoted by the laying out and opening of such highway through said orchard; and commissioners appointed by this court have certified that such highway is necessary, and have assessed the damages of T. W., by reason thereof, at \$.

Dated this day of , .

[*Signature of town superintendent of highways.*]

1134. Order to Lay Out Highway Through Certain Lands.

At a term of the county court, held at , in the of , on the day of , .

Present.—Hon. E. E., county judge.

In the Matter of the Application
of L. M. to Lay Out a Highway
in the Town of , and the
Assessment of Damages There-
for.

Upon reading and filing the certificate of , town superintendent of highways of the town of , in the county of , dated the day of , , stating [*here state the substance of the facts in the certificate*], with proof of due service of notice of this motion, and upon reading the [*state what papers*], and after hearing A. D., of counsel for the applicant, and S. B., of counsel for T. W., opposed, it is hereby ordered that said highway be laid out and opened pursuant to section 200 of the Highway Law, with ten dollars costs of this motion.

E. E.,

County Judge.

¹The forms of petition and order in this proceeding are the same as in Forms Nos. 1117 and 1118.

1135. Order of Appellate Division Confirming Order of County Court.

At a term of the appellate division of the supreme court, in the department, held at the court-house, in the city of , on the day of , .

Present.—Hon. A. R., P. J.; Hon. B. D., Hon. C. E., and F. R., Justices.

In the Matter of the Application
of L. M., to Lay Out a Highway
in the Town of , and the
Assessment of Damages There-
for.

A. B., as town superintendent of highways of the town of , in the county of , having presented to us the order of the county court of county, dated the day of , , that a highway be laid out in said town, passing through the orchard of T. W., of the growth of four years or more, pursuant to section 200 of the Highway Law, the said T. W. not consenting thereto, with the certificate and proofs upon which the said order was granted, duly certified by such court, with proof of due service of notice of this motion, on the said T. W., and after hearing S. B., of counsel for the applicant, on the motion, and X. B., of counsel for T. W., opposed, it is hereby ordered that the said order of such county court be, and the same is hereby confirmed, with \$, costs of this motion.

1136. Certificate of Highway Commissioners on Foregoing Orders.

WHEREAS, L. M. did, on the day of , , present to me, as town superintendent of highways of the town of , in the county of , a written application to lay out a highway in said town, passing through an orchard of T. W., of the growth of four years or more, and such proceedings having been had thereon, pursuant to section 200 of the Highway Law, that the county court of said county has ordered said highway to be laid out and opened, which said order has been duly confirmed by the appellate division of the supreme court, in the department, which said application, certificates, and orders and other papers in said proceedings are duly filed in the office of the town clerk of said town, to which reference is here made:

Now, THEREFORE, I, the undersigned, town superintendent of highways, pursuant to section 200 of the Highway Law, do hereby lay out said highway as so applied for and ordered, whereof a survey has been made as follows: Beginning [*insert survey bill*], and the highway is to be rods in width.

Dated this day of , .

[*Signature of town superintendent of highways.*]

1137. Application to Lay Out Private Road.

TO THE TOWN SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF IN THE COUNTY OF :

The undersigned, who is liable to be assessed for highway taxes in your town, hereby makes application to you to lay out a private road for his use and benefit, beginning [*insert description, giving its width and location, courses, and distances, and names of owners and occupants*], and said proposed road will run through the land of T. W., occupied by R. S.

Dated this day of , .

L. M.

1138. Notice of Selecting Jury to Determine Necessity of Road.

To T. W., OWNER, AND R. S., OCCUPANT:

L. M., of the town of _____, in the county of _____, having made written application to me, the undersigned, as town superintendent of highways of said town, to lay out a private road for his use and benefit, in said town, a copy of which is hereto attached, you are hereby notified that a jury will be selected at the house of _____, in said town, on the _____ day of _____, at _____ o'clock, in the _____ noon, for the purpose of determining upon the necessity of such road, and assessing the damages therefor.

Dated this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1139. Affidavit of Service of Foregoing Notice.

COUNTY OF _____, }
Town of _____, } ss.:

L. M., being duly sworn, says that he served the application and notice hereto attached on T. W. and R. S., on the _____ day of _____, _____, by delivering to and leaving with each of them, copies of the same [or, if served by leaving copies at the residence, so state].

Subscribed and sworn to before me,

L. M.

this _____ day of _____, _____.

G. H.,

Justice of the Peace.

1140. Summoning Jury.

COUNTY OF _____, }
Town of _____, } ss.:

To [insert the names of the twelve jurors selected]:

You are hereby summoned and required to appear at the _____, in said town of _____, on the _____ day of _____, _____, at _____ o'clock in the _____ noon, to form a jury of freeholders to determine as to the necessity of laying out a private road through the lands of T. W., on the application of L. M., and to assess the amount of damages sustained by reason of such opening, if it is determined to open the same.

Dated this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1141. Oath of Jurors.

You do solemnly swear, in the presence of the ever-living God [or, affirm], that you will well and truly determine as to the necessity of a private road across the lands of T. W., as has been applied for by L. M., and that you will well and truly assess the damages occasioned by the opening of such road.

1142. Oath of Witnesses.

You do solemnly swear [or, affirm], that the evidence you shall give, touching the necessity of laying out the private road as applied for by L. M., and the damages to be sustained thereby, shall be the truth, the whole truth, and nothing but the truth, so help you God.

1143. Verdict of Jury.

COUNTY OF _____, }
 Town of _____, } ss.:

We, the undersigned, being twelve disinterested freeholders of the said town of _____, having met on the _____ day of _____, _____, at the house of _____, in said town, and having been duly sworn, well and truly to determine as to the necessity of the private road described in the application of L. M., a copy of which is hereto attached, and having viewed the premises through which it is proposed to be laid out, and having heard the parties and evidence produced, do hereby certify that in our opinion it is necessary to lay out a private road for the use and benefit of L. M., pursuant to his said application, and we assess the damages of T. W. at \$ _____.

Dated this _____ day of _____, _____.

[The twelve jurors sign here.]

1144. Order of Town Superintendent of Highways Laying Out Private Road.

WHEREAS, L. M., did present to me, as town superintendent of highways of the town of _____, in the county of _____, a written application to lay out a private road in said town, for his use and benefit, hereinafter described; and twelve disinterested freeholders having convened, after due notice to the owners and occupants of the lands through which said road is proposed to be laid, and, after viewing said lands and hearing the parties and witnesses produced, certified that said road is necessary, and assessed the damages to be caused thereby, which certificate was dated the _____ day of _____, _____, and duly filed with said application, in the office of the town clerk of said town; and whereas, no motion has been made to the county court to confirm, vacate, or modify [or, as the case may be]:

Now, THEREFORE, I, the undersigned, town superintendent of highways of said town, pursuant to section 221 of the Highway Law, do hereby lay out said private road as so applied for and certified to, whereof a survey has been made as follows: [here insert survey bill], and the road is to be _____ rods in width.

Dated this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1145. Certificate of Discontinuance of Public Highway.

I, the undersigned, town superintendent of highways of the town of _____, in the county of _____, hereby certify that the highway [here describe it], has been abandoned by the public, and is no longer used as a public highway; and pursuant to section 234 of the Highway Law, the same is discontinued.

[Signature of town superintendent of highways.]

1146. Notice of Meeting, When Officers of Different Towns Disagree About a Highway.

To N. N. AND W. W.:

NOTICE is hereby given that the undersigned who is town superintendent of highways for the town of _____, will meet the town superintendent of high-

ways for the town of _____, at _____, in said town, on the _____ day of _____, at _____ o'clock in the _____ noon, for the purpose of determining upon the necessity of and arriving at a common understanding in relation to the laying out of a new highway [or, the altering of a highway], extending from the town [or, city, or, village] of _____, to the town [or, city, or, village] of _____, and described as follows: [*Insert description*].

Dated this _____ day of _____, _____.

1147. Certificate of Disagreement.

COUNTY COURT.— _____ COUNTY.

In the Matter of the Application
of L. M., to Lay Out [or, Alter]
a Highway Extending from the
Town [or, City, or Village] of _____
, to the Town [or, City,
or, Village] of _____.

TO THE COUNTY COURT OF _____ COUNTY:

The undersigned, town superintendent or highways of the town of _____, in the county of _____, hereby certifies that on the _____ day of _____, _____, L. M., who is liable to be assessed for highway taxes in the town of _____, made a written application to me, as such town superintendent, to lay out [or, alter] a highway extending from the town [or, city, or, village] of _____, in the county of _____, to the town [or, city, or, village] of _____, in the county of _____. That the town superintendent of highways of the said towns [or, the town superintendent of highways of the said town and the city or village authorities of the said city or village] cannot agree as to the necessity of such highway or the terms upon which the same shall be laid out.

[*Signatures of town superintendents or officers of a village or city having like powers.*]

1148. Order Appointing Commissioners on the Foregoing Certificate.

At a _____ term of the county court of the county of _____, held on _____, at _____, in the _____, in and for said county.

Present.—Hon. E. E., county judge.

In the Matter of the Application
of L. M., to Lay Out [or, Alter]
a Highway Extending from the
Town [or, City, or Village] of _____
, to the Town [or, City,
or, Village] of _____.

On reading and filing the certificate of S. S., town superintendent of highways of the town of _____, and D. D. and F. F. [*title of officials of the city or village*], of _____, in the county of _____, dated the _____ day of _____, _____,

stating [*here state substance of facts in the certificate*], and upon reading the [*state what papers*], and after hearing M. D., of counsel for the applicant, and O. L. P., of counsel for R. C. C., opposed, it is hereby ordered that A. B., A. C., and F. F., of the town of _____, county of _____, be, and they are hereby appointed commissioners to determine upon the necessity of laying out [*or, altering*] such highway [*or adjust the terms upon which such highway shall be laid out or altered*].

1149. Notice of Appointment.

To A. B., A. C., AND F. F.:

Take notice that you, and each of you, have been duly appointed commissioners by an order of the county court, a copy of which is hereto annexed, and you are required to fix a time and place at which you will all meet to hear the town superintendents of highways of both towns, or the town superintendent of highways of the town of _____, and the [*name corresponding officials*], of the city [*or, village*] of _____, and all other persons interested in the highway question.

Dated this _____ day of _____, _____.

1150. Decision of Commissioners.

The undersigned, by an order of the county court of _____ county, dated the _____ day of _____, _____, having been appointed commissioners to certify as to the necessity of laying out [*or, altering*] a highway, extending between the town [*city or village*] of _____, and the town [*city or village*] of _____, in the county of _____, and described as follows [*insert description*]:

Now, THEREFORE, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at _____, in the town of _____, on the _____ day of _____, _____; pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service of the notice on the town superintendents of highways of the towns of _____ [*or, town superintendents of highways of the town of _____, and corresponding officers of the city or village of _____*], and having viewed the proposed highway [*or, proposed alteration of a highway*], and having heard all the allegations of the town superintendents of highways, and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify that in our opinion it is necessary that the highway be laid out [*or, altered*], and we have assessed the damages required to be assessed by reason of laying out [*or, altering*] such highway as follows:

The damages of N. N., at \$ _____; the damages of M. O., at \$ _____, etc.

Dated this _____ day of _____, _____ [*Signatures of commissioners.*]

1151. Application to Lay Out Highways upon Town Line.

TO THE TOWN SUPERINTENDENT OF HIGHWAYS OF EACH OF THE TOWNS A. AND B., IN THE COUNTY OF _____:

We, the undersigned, L. M., an inhabitant of the town of A., in said county, liable to be assessed for highway taxes therein, and T. W., an inhabitant of

the town of B., said county, and liable to be assessed for highway taxes therein, hereby apply to you to lay out a highway on the line between said towns, beginning [here insert description of the proposed highway], and which said highway will pass through the lands of J. K. and R. S.

Dated this day of , . L. M.
T. W.

1152. Order on Foregoing Application.

[As in Form No. 1109 to the *, and from thence as follows:]

And it is ordered that upon laying out the said highway, the expense of opening, working and keeping the same in repair shall be borne equally by such towns.

Dated this day of , .
[Signature of town superintendent of highways of the town of A.]
[Signature of town superintendent of highways of the town of B.]

1153. Notice by Town Board of One Town to Town Board of Another Town to Join in the Construction or Repair of a Bridge at the Joint Expense of Such Towns.

TO THE TOWN BOARD OF THE TOWN OF , IN THE COUNTY OF :

Take notice that in pursuance of the proceedings of the board of supervisors of the county of [here briefly recite the action of the board of supervisors with relation to the bridge], you are required to give your consent in writing to the constructing [or, repairing] of such bridge, at the joint expense of said towns, and to serve upon us your written consent thereto, within twenty days after service of this notice upon you, and within a reasonable time thereafter direct, by resolution the same to be done, and that in case of your failure so to do, the town superintendent of highways of the town of , will proceed to construct [or, repair] such bridge pursuant to law.

Dated this day of , . [Signature of town clerk.]

1154. Complaint that Toll-Bridge is Unsafe.

COUNTY OF ,
Town of , } ss.

L. M., being duly sworn, says, that he believes the toll-bridge belonging to , situated on the [give name of stream], at [describe place], has become and is unsafe for public use and travel; and that the reasons for his belief are founded on the following facts: [here state them]. L. M.

Subscribed and sworn to before me, this
day of , .
G. H.,
Justice of the Peace.

1155. Notice to Owners of Toll-Bridge that the Bridge is Unsafe.

TO [OWNERS OR AGENT OF THE OWNERS, ACTING AS AGENT IN RESPECT TO SUCH BRIDGE, as the case may be]:

You are hereby notified that the town superintendent of highways of the town of , in the county of , has on complaint made, carefully and

thoroughly examined the toll-bridge situated on the _____ at [describe the situation], and found it to be unsafe for public use and travel. [State briefly wherein it is unsafe].

Dated this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1156. Notice of Claim by Reason of Defective Highway, Etc.

To R. S., SUPERVISOR OF THE TOWN OF _____, IN THE COUNTY OF _____:

I claim a cause of action against the said town of _____, by reason of defects in the highway, [or, bridge], in said town, and the following is a statement of such case of action: [Here state cause of action as in a complaint in an action.]

Dated this _____ day of _____, _____, L. M.

STATE OF NEW YORK, }
County of _____, } ss.

_____, being duly sworn, deposes and says, I am the above-named claimant. I have read the foregoing statement of claim, and know the contents thereof. The same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe the same to be true.

Sworn to before me, this

day of _____, _____.

III. ENCROACHMENTS.

1157. Order by the Town Superintendent of Highways to Remove Fences Encroaching on the Highway.

The town superintendent of highways of the town of _____, in the county of _____, having ascertained that the public highway in said town, leading from _____ to _____, is encroached upon and obstructed on the _____ side thereof, along the lands in the occupation of A. B., by fences which form part of the inclosure of said lands through which the highway leading from _____ to _____, has been laid out, which said fences have not been removed, although notice to remove same has been given according to law, and having caused the said highway to be surveyed, and having ascertained the true bound and limit thereof on that side to be upon the following line [here insert the survey of the line over which the encroachment is made], and that the strip of land which lies between the said fences and the line above described is a part of the public highway aforesaid.

IT IS ORDERED by the town superintendent of highways of said town that the said fences be removed, and that the highway be open and unobstructed.

WITNESS my hand this _____ day of _____, _____.

[Signature of town superintendent of highways.]

1158. Notice to Occupant to Remove Encroachment.

PLEASE take notice, that the town superintendent of highways of the town of _____ having ascertained that the public highway in said town, leading from _____ to _____ is encroached upon and obstructed on the _____ side thereof, along the lands occupied by you, by fences which form part of the

inclosure of said lands, through which the highway leading from to
 , has been laid out, you are required, according to the statute, to re-
 move the said fences within sixty days after service of this notice.

[Signature of town superintendent.]

[Date.]

[Address.]

CHAPTER XXXIII.

HUSBAND AND WIFE.

THE forms for MARRIAGE, and MARRIAGE SETTLEMENTS, are treated under their respective titles.

Husband and wife could not, under the common law, make binding executory contracts with each other, but transactions based on such contracts were sometimes upheld in courts of equity for the protection of the parties. By the principles of the common law, a married woman cannot, as a general rule, make a valid contract of any description in relation to either real or personal property. But statutes adopted in many of the states have empowered married women to hold separate property and to make contracts in relation thereto, in most respects, as if unmarried. At common law, conveyances of property between husband and wife are not valid, but are sustained in equity in proper cases. But it is competent to a husband and wife to convey land to a third person, and for him to reconvey to either, and in some of the states, direct conveyances and other transactions between husband and wife, are expressly allowed by statute. See Domestic Relations Law of New York, §§ 51, 56; Birdseye, C. & G. Cons. Laws, 1909, pp. 1037, 1054.

An agreement for a separation and for a separate allowance to the wife, may be made through the medium of a trustee. But such an agreement is not valid unless the separation has already taken place, or is to take place immediately. But in case of such separation, unless a separate maintenance is given her, the husband will continue to be liable for her contracts for necessaries furnished to her.

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| 1159. Articles of separation..... | 963 |
| 1160. Same; another form..... | 964 |

1159. Articles of Separation.

THIS INDENTURE, made this day of , one thousand nine hundred and , between A. B., of , merchant, of the first part, and C. B., his wife, of the second part, and Y. Z., of , merchant, as trustee of the said C. B., of the third part:

WHEREAS, divers disputes and unhappy differences have arisen between the said party of the first part and his said wife, for which reason they have consented and agreed, and hereby do consent and agree, to live separate and apart from each other during their natural life:

THEREFORE, THIS INDENTURE WITNESSETH: That the said party of the first part, in consideration of the premises, and in pursuance thereof, does hereby covenant, promise, and agree to and with the said trustee, and also to and

with his said wife, that it shall and may be lawful for her, his said wife, at all times hereafter, to live separate and apart from him, and that he shall and will allow and permit her to reside and be in such place and places, and in such family and families, and with such relations, friends, and other persons, and to follow and carry on such trade or business as she may from time to time choose or think fit; and that he shall not, nor will at any time, sue, or suffer her to be sued, for living separate and apart from him, or compel her to live with him; nor sue, molest, disturb, or trouble any other person whomsoever, for receiving, entertaining, or harboring her; and that he will not, without her consent, visit her, or knowingly enter any house or place where she shall dwell, reside, or he, or send, or cause to be sent, any letter or message to her; nor shall or will, at any time hereafter, claim or demand any of her money, jewels, plate, clothing, household goods, furniture, or stock in trade, which she now has in her power, custody, or possession, or which she shall or may at any time hereafter have, buy, or procure, or which shall be devised or given to her, or that she may otherwise acquire, and that she shall and may enjoy and absolutely dispose of the same as if she were a *feme sole* and unmarried; and further, that the said party of the first part shall and will well and truly pay, or cause to be paid, for and towards the better support and maintenance of his said wife [*here state the provision for maintenance*], which the said party of the second part does hereby agree to take in full satisfaction for her support and maintenance, and all alimony whatever. And the said trustee, in consideration of the sum of one dollar to him duly paid, does covenant and agree to and with the said party of the first part, to indemnify and bear him harmless of and from all debts of his said wife, contracted, or that may hereafter be contracted by her, or on her account; and if the said party of the first part shall be compelled to pay any such debt or debts, the said trustee hereby agrees to repay the same, on demand, to the said party of the first part, with all damage and loss that he may sustain thereby.

IN WITNESS WHEREOF, the said parties have hereunto affixed their names and seals, this day of , one thousand nine hundred and

[*Signatures and seals.*]

1160. The Same; Another Form.

THIS AGREEMENT, made this day of , , by and between A. B., of the city of , county of , state of , party of the first part, and C. B., wife of said A. B., party of the second part, and E. F. and G. H., trustees, both of the said city of , parties of the third part:

WHEREAS, the said A. B. and C. B. duly intermarried on or about the day of , ; and,

WHEREAS, there has been the following issue of the said marriage, to wit [*here give the names and ages of the children*]; and,

WHEREAS, divers disputes and unhappy differences have arisen between the said parties of the first and second parts, by reason whereof they have consented and agreed, and do hereby consent and agree, to live separate and apart from each other in the future and during their natural lives, unless they shall mutually agree to vacate this agreement; and,

WHEREAS, the said parties of the third part have, at the request of the other parties hereto, agreed to act as trustees hereunder, and to enter into the obligations and covenants herein contained:

NOW, THIS INDENTURE WITNESSETH: That in pursuance of the conditions and covenants herein contained, and in consideration of the sum of one dollar to each party hereto by the other duly paid, the receipt whereof is hereby acknowledged, and for the other considerations herein contained, the said party of the first part doth hereby, so far as the covenants, conditions, and provisions hereinafter contained, are or ought to be performed or observed by him, covenant with the said party of the second part, and also with the said parties of the third part, and the said parties of the second and third parts do hereby, so far as the covenants, conditions, and provisions hereinafter contained are or ought to be performed or observed by the said parties of the second or third parts respectively hereto, or by either of them, covenant with the said party of the first part, as follows, that is to say:

1. It shall be lawful for the said party of the second part, at all times hereafter, to live separate and apart from the said party of the first part, and free from his marital control and authority, as if she was sole and unmarried, and to reside from time to time at such place or places, and with such persons as she shall from time to time think fit, and to conduct, carry on, and engage in any employment, business, or trade which she shall deem fit, for her own sole and separate use and benefit, without and free from any control, restraint, or interference, direct or indirect, by the party of the first part, in all respects as if she were sole and unmarried.

2. Neither the said parties of the first or second part shall molest the other, nor compel or endeavor to compel the other party to cohabit or dwell with him or her, by any legal or other proceedings, for restitution of conjugal rights or otherwise howsoever.

3. Neither of the said parties of the first and second parts shall take any proceedings against the other to obtain a divorce or judicial settlement or otherwise, in respect to any acts or misconduct which have heretofore taken place, or are alleged to have taken place on the part of either of said parties.

4. The said party of the first part shall, during the joint lives of himself and wife, pay to her, the said party of the second part, the sum of \$ per annum, as her separate estate, in equal payments, commencing with the day of , but the party of the second part shall have no power to anticipate said payments, [*or, the party of the first part doth hereby agree that he will pay or cause to be paid unto the said trustees, [or, to one of the trustees], during the life of his said wife, and for her use and benefit, and so long as she shall observe the provisions of this agreement on her part to be kept and observed, the sum of \$ per month, for her maintenance, clothing, and other necessities, and for her sole use and benefit, and without any control of the other parties hereto*], [*or, the said party of the first part has hereby made over, assigned, and transferred to the said parties of the third part the following property [here describe it], upon the agreement and understanding that the said parties of the third part shall collect and receive the proceeds, rents, issues, and profits of the said property so turned over to them, and pay over the same, less their expenses in connection therewith, to the said wife, for her sole and separate use*] [*here insert proper provisions as to acts of trustees, etc., which will be found under the chapter upon WILLS*]. The party of the second part shall own, have, and enjoy, independent of any claim or right of the party of the first part, all her wearing apparel, personal ornaments, and other personal property belonging to the

party of the second part, and now in her possession, and all the property of the said party of the second part, both real and personal, now held by her, or which shall hereafter belong or come to her, shall be and remain her sole and separate property, free and discharged from all rights of the party of the first part, by curtesy or otherwise, and with full power to said party of the second part to sell, assign, convey, deal with, bequeath, or dispose of said property in her lifetime, or by her last will and testament or codicil, as fully and effectually, in all respects, as if she was sole and unmarried. And the party of the first part hereby covenants and agrees that he will from time to time make, execute, and deliver all such necessary deeds and other instruments, and do such other acts as may be necessary under this article of this agreement, to carry out its provisions.

5. Said party of the second part shall have the right to dispose of her property by last will and testament, or otherwise, and the party of the first part agrees that the estate of the said wife, whether real or personal, shall, subject to her debts and engagements, go and belong to the person or persons who would have become entitled thereto if the party of the first part had died during the lifetime of the party of the second part. And the party of the first part further covenants and agrees that he will permit any will of the party of the second part to be probated, and allow administration upon her personal estate and effects to be taken out by the person or persons who would have been entitled so to do had he died during her lifetime.

6. The party of the part shall have the sole custody and control of [*here name the children, or provide that the husband shall have the custody and control of some of the children, and the wife of the others*], and of their education, until they shall respectively attain the age of years, without any interference whatsoever on the part of the other parties hereto. But the said parties of the first and second part shall at all convenient and reasonable times, to be settled in case of dispute by the parties of the third part hereto for the time being, have access to and communication with any of the said children who shall for the time being be living with or under the control of the other of said parties of the first and second part.

7. So long as any of said children shall, during the joint lives of said parties hereto of the first and second part, be living with or under the control of the said party of the second part, the said party of the first part shall and will pay to the said parties of the third part, in trust for the said wife, and to be paid over to her, the sum of \$ per month, for and in respect of each and every such child under the age of years, and the sum of \$ per month, for and in respect of each such child who shall be over the age of years and unmarried; such sum so paid to the party of the second part to be applied by her upon or towards the maintenance and education and benefit of such child or children, but without liability to account so long as she shall maintain and educate such child or children to the satisfaction of said trustee or trustees.

8. The party of the second part hereby covenants and agrees that so long as the party of the first part shall duly keep and perform the covenants, conditions, and agreements to be kept and performed by him hereunder, she will not at any time hereafter contract any debt or debts, charge or liability whatsoever, for which the party of the first part, or his property or estate, shall or may be or become personally liable or answerable, and neither she

nor any other person or persons on her behalf, or with her authority, consent, or procurement, shall or will institute any action at law or in equity, or any proceeding whatever, either for a divorce, judicial settlement, alimony, or for any other purpose, except for or upon any adultery hereafter committed by the said husband, or for personal injuries or wrongs committed by the said husband upon the person or estate of the said party of the second part. And the said parties of the second and third parts hereby covenant and agree that they will at all times hereafter keep the said party of the first part, free, harmless, and indemnified from any and all debts or liabilities heretofore or hereafter to be contracted or incurred by the said party of the second part, and from any and all actions, proceedings, claims, and demands, costs, damages, and expenses whatsoever, in respect of such debts and liabilities, or any of them.

9. In case the said party of the first part shall at any time or times hereafter be called upon to pay or discharge, and shall in fact pay or discharge any debt or liability heretofore or hereafter incurred or contracted by said party of the second part, then and in every such case it shall be lawful for the said party of the first part, at his option, to deduct and retain the amount which he shall have so paid, together with all costs and expenses, out of any sum or sums of money then due or thereafter to grow due and be paid to the said party of the second part hereunder.

10. If the said party of the first part shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay and discharge any debt or liability hereafter contracted or incurred by the said party of the second part, or in case the said party of the second part, or any person or persons on her behalf, either with or without her authority or consent, bring any action or institute any proceedings against the party of the first part, to compel or induce him to pay or allow the party of the second part any further alimony or additional allowance, except as herein provided, or for any divorce or judicial proceeding, or for any other purpose whatever, except as herein provided, or if the said party of the first part shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge any debt or liability hereafter contracted or incurred by the said party of the second part, or if the said party of the second part shall at any time take any proceedings against the party of the first part for restitution of conjugal rights, or otherwise for compelling him to cohabit with her, or if the party of the first part shall, by or through the consent or procurement of the party of the second part, be otherwise annoyed or molested by or on her behalf, or if she shall not observe and perform the stipulations and agreements on her part to be kept hereunder, then in either of such cases this agreement shall, at the option of the party of the first part, thenceforth become null, void, and of no effect; without prejudice, however, to any right or rights, or claim or claims, which may have accrued hereunder or by virtue hereof, to any party hereto.

11. The said respective parties hereto of the first and second part shall, and will at any time or times hereafter, make, execute, and deliver any and all such further and other assurances and things, as the other of said parties, or the said parties of the third part, for the time being, shall reasonably require, for the purpose of giving full effect to these presents, and to the covenants, conditions, provisions, and agreements hereof.

12. PROVIDED, HOWEVER, and these presents are upon the express understanding and agreement that if the said parties of the first and second part hereto shall become and be reconciled and again cohabit together, or if their marriage shall be dissolved by order of court, that then and in every such case this agreement, and the provisions and conditions thereof, shall become null and void, and of no effect, but without prejudice to any act or thing done, or right accrued, or proceedings taken hereunder on the part of any of the parties hereto.

13. [*Here provide for the compensation, if any, of the trustees, and for the filling of any vacancy which may occur by death, resignation, or otherwise, of either or both trustees.*]

14. It is hereby further mutually covenanted and agreed that all the covenants, stipulations, promises, agreements, and provisions in this instrument contained, shall apply to, bind, and be obligatory upon the heirs, executors, administrators, personal representatives, successors, or assigns of the said several parties hereto, or either of them, whether so expressed or not.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the day and year first above written.

In presence of

[*Signatures and seals.*]

CHAPTER XXXV.

INSURANCE.

Forms of policies of insurance are usually prepared by the insurance companies themselves, although, in the case of fire insurance, it is now usual for a standard form to be prescribed by statute.

Fire policies usually contain provisions requiring that:

If fire occur the insured shall give immediate notice of any loss thereby, in writing, to the company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by the company, render a statement to the company, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of the policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery, destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured), living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The forms of proofs given below correspond with the foregoing provisions of the policy.

For the various provisions relating to insurance in New York state, see the Insurance Law. Birdseye, C. & G. Cons. Laws, 1909, pp. 2511-2692.

In cases of marine insurance, after a constructive total loss, the insured may relinquish to the insurers his interest in the thing insured, so as to enable him to claim for a total loss. This act is termed abandonment. It is made by giving notice thereof, either orally or in writing. If in writing, no particular form is required; but it must be explicit, and should specify the particular cause of the abandonment. It cannot be either partial or conditional. The notice must be given within a reasonable time after information of the loss. Once given, it is irrevocable, unless the insurers refuse to accept it or consent to a revocation; but it may become of no effect, if the information of loss proves unfounded.

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1161. Immediate Notice of Loss.

To THE INSURANCE COMPANY OF :
 My , situated on street, in , insured by your company by policy No. , was injured [or, destroyed] by fire this morning. The origin of the fire [or, is to me unknown]. Full proofs of the loss will be duly forwarded to you, as soon as they are prepared. [Signature.]
 [Date.]

1162. Statement and Proof of Loss for Claims Less than \$100.

To THE INSURANCE COMPANY:
 The property described in your policy No. , of agency, issued for the term of , from , to , was damaged by a fire which occurred on the day of , 18 , caused by .
 The ownership and location of said property are as stated in said policy; and the cash value thereof, the whole insurance and loss thereon, together with the insurance by and the claim upon you, are as follows:

| Description of property. | Cash value. | Whole insurance. | Whole loss. | Insurance by Co. | Claim upon Co. |
|--------------------------|-------------|------------------|-------------|------------------|----------------|
| | | | | | |

There was incumbrance upon said property; and besides your policy there was only dollars other insurance, all of which covered in like manner.

The buildings referred to in said policy were occupied only as permitted therein; and the said fire did not originate by any act, design, or procurement, on the part of the insured, or prohibited by said policy; and nothing has been

done before or since the fire by said insured, or by the party making this statement and proof, to violate any of the conditions of said policy.

In accordance with the foregoing, claim dollars, as your share of the loss.

Subscribed and sworn to before me, Claimant.
 this day of , .

I hereby certify that the foregoing claim is just and true.
Agent.

1163. Same; Receipt on Payment of Loss.

\$.
 RECEIVED at , on the day of , , of the Insurance Company of , dollars, in full satisfaction of all claims for loss and damage by fire as stated above, under policy No. , of agency, and in consideration thereof hereby release and discharge the said company from all claims whatsoever growing out of said fire loss or damage, directly or indirectly, and the amount of said policy is hereby reduced in the above-mentioned sum, leaving the sum of dollars only in force on said policy.

WITNESS my hand and seal, [SEAL.]

1164. Same; Schedule of Other Insurance and Apportionment of Claim.

| Company. | Amount insured. | Amount claimed. | Company. | Amount insured. | Amount claimed. |
|----------|-----------------|-----------------|----------|-----------------|-----------------|
| | | | | | |

1165. Statement and Proof of Loss for Claims Over \$100.

TO THE INSURANCE COMPANY, OF .

1. The above-named insurance company, by its policy of insurance No. , issued at its agency, for the term of , from the day of , to the day of , , insured against loss or damage by fire, as therein expressed, to the amount of dollars. (Said policy was by renewal No. , continued in force until the day of .) The written portion of said policy, and all provisions, agreements, conditions, and transfers indorsed thereon or added thereto, are as follows: *[here insert them].*

2. A fire occurred on the day of , , at or about the hour of M., causing loss and damage to the property described in said policy, to the amount of dollars. The origin of said fire was as follows: *[If the origin of the fire is unknown, the best information obtainable, and the belief of the insured regarding it, must be stated.]*

3. The sole owner in fee simple of the building covered by the said policy, and of the ground on which said building stood . The sole owner of the personal property covered by the said policy . The members of said firm were .

4. The cash value of each item of property covered by the said policy, and described and located as therein specified, at the time of the fire, and the amount of direct loss and damage thereon caused by said fire, and for which claim is hereby made, were as follows:

| | Cash value. | Whole insurance. | Whole loss. | Insurance by Co. | Claim upon Co. |
|-------------------|-------------|------------------|-------------|------------------|----------------|
| First item | | | | | |
| Second item | | | | | |
| Third item | | | | | |
| Fourth item | | | | | |
| Fifth item | | | | | |
| Sixth item | | | | | |
| Totals | | | | | |

[If the amount of loss be ascertained by appraisal, the award of the appraisers, or a certified copy thereof, must be attached hereto. In case of loss on personal property, a statement must be appended showing how the amount of loss is arrived at, and referring to the full inventory filed with one of the companies named in Schedule A.]

5. No incumbrance existed on any portion of the premises or property, except as follows, in favor of the persons and in the amounts following:

6. All other insurance and agreements for insurance, verbal or written, whether valid or not, covering any part of said property at the time of the fire, amounting to dollars, and the apportionment of the claim upon each company, are shown in schedule "A," annexed hereto, which contains true copies of all the descriptions and schedules in all the policies covering on the said property, together with the dates of expiration of the several policies.

7. There have been no changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of said policy, except as follows:

8. The building or buildings described in the policy, and the several parts thereof, were occupied at the time of fire only by the persons hereinafter named and for the following purposes: , and for no other purpose whatever.

9. The said fire did not originate by any act, design, or procurement, on the part of the insured, or prohibited by said policy; and nothing has been done before or since the fire by said insured, or by the party making this statement and proof, to violate any of the conditions of said policy.

10. This statement and claim are subscribed and sworn to by the undersigned, pursuant to the provisions of said policy, and the sum claimed from the Insurance Company as its share of said loss as above specified is dollars.

It is hereby covenanted that the furnishing of this blank, or the making up of proofs by an adjuster or other representative of the company, shall not be construed as a waiver of any of the rights of the company.

Dated at , this day of , .

Subscribed and sworn to before me, a in and for the county of , state of , this day of , .

1166. Same; Schedule A; Apportionment of Claim.

| No. of policy. | Name of company. | Expiration of policy. | Amount insured. | Whole amount claimed under policy. | 1st ITEM. | | 2d ITEM. | | 3d ITEM. | | 4th ITEM. | | 5th ITEM. | | 6th ITEM. | |
|----------------|------------------|-----------------------|-----------------|------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| | | | | | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. |
| | | | | | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. | Amount insured. | Amount claimed. |

(The descriptions and schedules of all the above-named policies must be attached hereto.)

1167. Certificate of Magistrate or Notary Public.

STATE OF _____, }
 County of _____, } ss.

I, _____, of _____, the _____, living nearest the place of fire damaging property described in policy herein referred to, hereby certify that I am not interested in the claim herein made, either as a creditor or otherwise, nor related to the insured or sufferers; that I have examined the circumstances attending the fire or damage as alleged, and believe that the insured has honestly sustained loss and damage on the property described in and covered by said policy, to the amount of _____ dollars.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this day of _____, A. D. _____.

1168. Short Form of Notice of Abandonment, Marine Insurance.

[Address.]

[Date.]

Understanding that the bark F., on her voyage from M. to N., has been compelled to seek the port of O. in distress, where she arrived, we hear, with several feet of water in her hold, and the cargo was landed and found very seriously damaged to more than one-half the value; we therefore hereby abandon to you two hundred and eighty hogsheads of sugar, valued at \$85 per hhd., insured by you under our open policy, No. 29,179, for \$23,800, and shall claim for a total loss.

Yours, etc.,

[Signature.]

1169. Abandonment of Vessel and Cargo, with Power of Attorney and Covenant for Further Assurance.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, we, A. B. and C. D., of the city of _____, in the state of _____, caused to be insured by the _____ Insurance Company [*here state the insurance — e. g., thus:*], lost or not lost, the sum of _____ dollars, to wit: the sum of _____ dollars on the ship M. N., and appurtenances, and the sum of _____ dollars on her cargo, from _____ to one or more ports in _____, and at and from either of them to _____, or her first port of discharge in the United States, as by a policy, numbered _____, will more fully appear; and,

WHEREAS, the said ship, whilst she was sailing on her voyage from _____ to _____, on or about the _____ day of _____, last past [*here state cause of loss — e. g., thus:*], was overtaken by a violent storm and gale of wind, by which the vessel was foundered and sunk with her said cargo, and thereby was, and ever since has been, and now is totally lost to us, the aforesaid A. B. and C. D.

Now, THEREFORE, KNOW YE, that we, the aforesaid A. B. and C. D., do hereby abandon to the said _____ Insurance Company such proportion of the said ship and cargo, and of our interest therein, as the said sum of _____ dollars by them insured bears to the whole vessel and cargo.

And we do hereby constitute and appoint G. H., Esq., president of the said _____ Insurance Company, our true and lawful attorney in our names, but for the use of the said company, and at their costs and charges, to claim, sue for, recover, and receive such proportion of the said vessel and cargo, as is hereinbefore by us abandoned.

And we, the said A. B. and C. D., do hereby for ourselves, our executors and administrators, covenant and agree, to and with the said company, that we, our executors and administrators, shall and will, at all times hereafter, at the request, and at the costs and charges of the said Insurance Company, make, seal, execute, acknowledge, and deliver all and every such further and other conveyances and assurances for the better conveying and assuring to the said company the proportion of the said vessel and cargo as to them, the said company, shall seem reasonably necessary.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals, this day of _____, one thousand eight hundred and _____

A. B. [SEAL.]

C. D. [SEAL.]

CHAPTER XXXV.

INTEREST.

Computation.—When interest is to be computed by months, a month is to be taken to be one-twelfth of a year; and the first table given below is appropriate for computing the interest in such cases.

Banks usually calculate interest on the basis of thirty days to the month, twelve months to the year, or 360 days to the year. This method of calculation is expressly authorized by the statutes in some states.

But when interest is expressed to be computable by days, each day is regarded as the 365th part of a year, and in such cases the second table is the appropriate one.

In commercial affairs, the calculation of interest on cents is not generally practiced, the usage being to increase the number of dollars by one, when there are fifty or more cents, and to disregard the cents when there are less than fifty.

Partial payments.—The rule for casting interest when partial payments have been made, is to apply the payment, in the first place, to the discharge of the interest then due. If the payment exceeds the interest, the surplus goes towards discharging the principal, and the subsequent interest is to be computed on the balance of principal remaining due. If the payment is less than the interest, the surplus of interest must not be taken to augment the principal; but interest continues on the former principal until the period when the payments, taken together, exceed the interest due, and then the surplus is to be applied towards discharging the principal, and interest is to be computed on the balance.

Compound interest, or interest calculated upon unpaid interest, is not in general collectible, unless there is an express agreement made after the interest has become due, that it shall bear interest.

The simplest rule for computing interest on the basis of 360 days to the year, is as follows: Multiply the principal by the number of days; then, for 6 per cent., divide by 60; for 7 per cent., divide by 51; for 8 per cent., divide by 45; for 9 per cent., divide by 40, and for 10 per cent., divide by 36. If the principal was in even dollars, point off two figures from the right. If the principal contained dollars and cents, point off four figures from the right.

Example.—Find the interest on \$468 for 138 days, at 6 per cent.

| |
|-----------|
| 468 |
| 138 |
| ----- |
| 3744 |
| 1404 |
| 468 |
| ----- |
| 60) 64584 |

10.76 = Interest.

Example.— Find the interest on \$468.98 for 138 days, at 6 per cent.

468.98
 138

 375184
 140694
 46898

60)6471924

10.7865 = Interest.

For the other rates, divide as above stated.

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- 1170. Tables, showing interest on sums from \$10 to \$5,000, for fifteen days, one month, and one year, at six and seven per cent. 975
- 1171. Same, on sums from \$100 to \$20,000 per day at six and seven per cent.. 975

1170. Table, Showing the Interest on Sums from \$10 to \$5,000, for Fifteen Days, One Month, and for One Year, at Six and at Seven Per Cent.

| 15 DAYS. | | | 1 MONTH. | | | 1 YEAR. | | |
|------------|-------------|-------------|------------|-------------|-------------|------------|-------------|-------------|
| | 6 per ct. | 7 per ct. | | 6 per ct. | 7 per ct. | | 6 per ct. | 7 per ct. |
| \$10..... | \$0.08..... | \$0.08..... | \$10..... | \$0.05..... | \$0.06..... | \$10..... | \$0.60..... | \$0.70..... |
| 20..... | 0.05..... | 0.06..... | 20..... | 0.10..... | 0.12..... | 20..... | 1.20..... | 1.40..... |
| 30..... | 0.08..... | 0.09..... | 30..... | 0.15..... | 0.18..... | 30..... | 1.80..... | 2.10..... |
| 40..... | 0.10..... | 0.12..... | 40..... | 0.20..... | 0.23..... | 40..... | 2.40..... | 2.80..... |
| 50..... | 0.13..... | 0.15..... | 50..... | 0.25..... | 0.29..... | 50..... | 3.00..... | 3.50..... |
| 60..... | 0.15..... | 0.18..... | 60..... | 0.30..... | 0.35..... | 60..... | 3.60..... | 4.20..... |
| 70..... | 0.18..... | 0.20..... | 70..... | 0.35..... | 0.41..... | 70..... | 4.20..... | 4.90..... |
| 80..... | 0.20..... | 0.23..... | 80..... | 0.40..... | 0.47..... | 80..... | 4.80..... | 5.60..... |
| 90..... | 0.22..... | 0.26..... | 90..... | 0.45..... | 0.53..... | 90..... | 5.40..... | 6.30..... |
| 100..... | 0.25..... | 0.30..... | 100..... | 0.50..... | 0.58..... | 100..... | 6.00..... | 7.00..... |
| 200..... | 0.50..... | 0.58..... | 200..... | 1.00..... | 1.18..... | 200..... | 12.00..... | 14.00..... |
| 300..... | 0.75..... | 0.87..... | 300..... | 1.50..... | 1.75..... | 300..... | 18.00..... | 21.00..... |
| 400..... | 1.00..... | 1.17..... | 400..... | 2.00..... | 2.33..... | 400..... | 24.00..... | 28.00..... |
| 500..... | 1.25..... | 1.46..... | 500..... | 2.50..... | 2.92..... | 500..... | 30.00..... | 35.00..... |
| 1,000..... | 2.50..... | 2.91..... | 1,000..... | 5.00..... | 5.83..... | 1,000..... | 60.00..... | 70.00..... |
| 2,000..... | 5.00..... | 5.83..... | 2,000..... | 10.00..... | 11.67..... | 2,000..... | 120.00..... | 140.00..... |
| 3,000..... | 7.50..... | 8.75..... | 3,000..... | 15.00..... | 17.50..... | 3,000..... | 180.00..... | 210.00..... |
| 4,000..... | 10.00..... | 11.66..... | 4,000..... | 20.00..... | 23.33..... | 4,000..... | 240.00..... | 280.00..... |
| 5,000..... | 12.50..... | 14.58..... | 5,000..... | 25.00..... | 29.17..... | 5,000..... | 300.00..... | 350.00..... |

1171. Same, on Sums from \$100 to \$20,000 at Six and Seven Per Cent.

| One day. | | | One day. | | |
|------------|-----------|-----------|--------------|-------------|-------------|
| | 6 per ct. | 7 per ct. | | 6 per ct. | 7 per ct. |
| \$100..... | 0.02..... | 0.02..... | \$2,000..... | \$0.33..... | \$0.38..... |
| 200..... | 0.03..... | 0.04..... | 3,000..... | 0.49..... | 0.58..... |
| 300..... | 0.05..... | 0.06..... | 4,000..... | 0.66..... | 0.77..... |
| 400..... | 0.07..... | 0.08..... | 5,000..... | 0.82..... | 0.96..... |
| 500..... | 0.08..... | 0.10..... | 6,000..... | 0.99..... | 1.15..... |
| 600..... | 0.10..... | 0.12..... | 7,000..... | 1.15..... | 1.34..... |
| 700..... | 0.12..... | 0.13..... | 8,000..... | 1.32..... | 1.53..... |
| 800..... | 0.13..... | 0.15..... | 9,000..... | 1.48..... | 1.73..... |
| 900..... | 0.15..... | 0.17..... | 10,000..... | 1.64..... | 1.99..... |
| 1,000..... | 0.16..... | 0.19..... | 20,000..... | 3.28..... | 3.84..... |

CHAPTER XXXVI.

LANDLORD AND TENANT.

The contract.—The appropriate instrument for creating and defining the relation of landlord and tenant is a LEASE, and matters concerning the contract are treated in the subsequent chapter under that title. It is not essential, however, that a contract of hiring real estate be reduced to writing if it do not exceed the term of one year. The agreement is not only often verbal, but is sometimes not even express, but implied from the circumstances under which the tenant has possession of the landlord's property.

Notice to quit.—Where a tenant, with consent of the landlord, enters into possession, without any express bargain, he is a tenant at will. A tenancy at will may be determined by the will of either party, but only after reasonable notice given by the party intending to terminate the tenancy. The rule is not uniform in the various states, as to what this notice should be. In some instances, a notice of six months may still be necessary, as it is in England. One of three months is more generally sufficient; and in some states the notice must be at least equal to the interval between the periods of payment of rent. In the absence of a statute rule, the general custom is that the notice should cover the whole of one of the regular intervals between payments. Thus if the rent is paid quarterly, so that three months' notice would be sufficient, the notice, even if given in the middle of a quarter, does not expire till the end of the following quarter. The statutes of some of the states (among others New York) makes one month's notice sufficient.

Where the tenancy is under a lease having a definite termination, or where it is a tenancy from year to year, a notice to quit is not necessary to enable the landlord to take summary proceedings under the statute.

No particular form of notice is necessary, but there must be reasonable certainty in the description of the parties, of the premises, of the purpose, and of the time.

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I. NOTICES.

1172. Notice to Terminate a Lease.

I HEREBY give you notice, that in pursuance of the power for this purpose given to me by the indenture of lease dated the day of , and made between you, of the one part, and me, of the other part, it is my intention to determine the lease thereby made on the day of next, and I shall therefore quit and deliver up possession to you [or, require you to quit and deliver up possession to me] of the messuage [or, of the said premises] [*etc., here briefly describe the premises*]. [Signature.]

[Date.]

[Address.]

1173. Notice to Quit by a Landlord, to a Tenant from Year to Year.

I HEREBY give you notice to quit and deliver up, on the day of next [if the current year of your tenancy expires on that day, or otherwise on the day on which the current year of your tenancy will expire, next after the end of half a year [or, of a quarter year; or, of a month] from the time of your being served with this notice], the possession of the messuage and premises [*etc., here briefly describe the property*], which you now hold of me as a yearly tenant. [Signature of landlord.]

[Date.]

[Address to tenant.]

1174. Notice to Quit, by Tenant from Year to Year, to Landlord.

I HEREBY give you notice, that I shall quit and deliver up, on the day of next [if the current year of my tenancy expires on that day, or otherwise on the day on which the current year of my tenancy will expire next after the end of half a year [or, a quarter year; or, of a month], from the time of your being served with this notice], the possession of the messuage and premises [*etc., here briefly describe the property*], which I now hold of you as a yearly tenant. [Signature of the tenant.]

[Date.]

[Address to the landlord.]

1175. Notice to Tenant to Quit in One Month (Under the Statute).

PLEASE TAKE NOTICE, that you are hereby required to quit, surrender, and deliver up possession of the [*here briefly describe premises*], and to remove therefrom, on the day of next, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant.

[Date.]

[Signature of landlord.]

[Address to tenant.]

1176. Notice to Tenant to Quit in Fifteen Days, Where Lease Reserves Right of Re-Entry.

PLEASE TAKE NOTICE, that you are hereby required to quit, surrender, and deliver up possession of the [*here briefly describe the premises*], and that I intend to re-enter and take possession of the said premises, on the day of next, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant.

[Date.]

[Signature of landlord.]

To tenant and any and all persons occupying said premises.

II. PROCEEDINGS TO DISPOSSESS.

1177. Affidavit by Landlord to Obtain Possession of Deserted Premises.

COUNTY OF _____, ss.

A. B., of _____, being duly sworn, says, that he demised to Y. Z., of _____, the premises lately occupied by the said Y. Z., on _____ street, in the village of _____, in said county, for the term of _____, from the _____ day of _____, 18____, at the yearly rent of _____ dollars, payable quarter-yearly; that the said Y. Z. entered into the possession of the said premises, as tenant thereof, by virtue of the said demise, * and is now indebted to your petitioner in the sum of _____ dollars, for one _____ rent of the said premises, due the _____ day of _____, _____; and that he has deserted the same, leaving the said rent in arrear, and the premises unoccupied and uncultivated. [Signature.] Sworn {etc., as in Form 1184}.

1178. Notice to Tenant Who Has Deserted the Demised Premises.

PLEASE TAKE NOTICE, that, at the request of A. B., your landlord, and upon due proof made to me that he had demised to you the premises upon which this notice is affixed, and that you were in arrear for one quarter's rent, amounting to _____ dollars, and that you had deserted the premises, leaving such rent in arrear, and had left them unoccupied and uncultivated, I have viewed the said premises, and am satisfied, upon such view, that the same have been so deserted; therefore, you are hereby required to appear, on the _____ day of _____, _____, at _____ o'clock in the _____ noon, at the place where this notice is affixed, and pay the rent due, or the landlord will be put in possession of the premises.

[Date.]

[Signature of justice of the peace.]

[Address to tenant.]

1179. Notice to Deliver Possession on Default in Rent.

TAKE NOTICE, that you are justly indebted unto me in the sum of _____ dollars for rent of [here briefly describe the premises], from the _____ day of _____, which you are required to pay on or before the expiration of three days from the day of the service of this notice, or surrender up the possession of the said premises to me, in default of which I shall proceed under the statute to recover the possession thereof.

[Date.]

[Signature of landlord.]

[Address to tenant.]

1180. Petition to Remove Tenant for Nonpayment of Rent.

TO THE _____ COURT OF THE CITY OF _____, to be held in the _____ [or, To _____, Esq., a justice of the peace of the _____ of _____]:

THE PETITION of A. B. respectfully shows that your petitioner is the landlord of the following premises, to wit: _____ rooms number _____, on the _____ floor, _____ side, in _____ house and premises, known as number _____, _____ street, in the city of _____, and that on or about the _____ day of _____, _____, said A. B. entered into an agreement with Y. Z., as tenant thereof, by the terms of which said agreement the said tenant hired from the said landlord the said premises before described, * and undertook and promised to pay the said landlord the sum of _____ dollars a month, payable monthly in advance, on the _____ day of each month thereafter dur-

ing occupancy, for the use and occupation thereof, and did thereupon enter into the occupation of said premises.

That on the day of , , there was due to the said landlord, under and by virtue of said agreement, the sum of dollars for month's rent of the said premises before described, to wit; from the day of , , to the day of , , which said rent has been demanded from said tenant personally since the same became due, and that said tenant has made default in the payment of said rent pursuant to the agreement under which the said premises are held, and that said tenant, and the assigns of said tenant, undertenants, or legal representatives hold over and continue in possession of said premises without the permission of the landlord after default in the payment of the rent as aforesaid, and that your petitioner is duly authorized to commence proceedings to dispossess said tenant and those claiming possession under said tenant.

WHEREFORE, your petitioner prays that a precept may be duly issued, requiring said tenant and each and every person in possession of the said premises, or claiming the possession thereof by or through said tenant, either as assigns, undertenants, legal representatives, or otherwise, to forthwith remove from said premises, or to show cause before said court, at a time and place in said precept to be named, why possession of said property or premises should not be delivered to the petitioner, and a final order made by said court, to remove him or them accordingly, and that the petitioner be awarded the costs of these proceedings.

Dated the day of , .

Petitioner.

COUNTY OF , ss.

The petitioner in the foregoing petition named, being duly sworn, doth depose and say that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters [if any] therein stated to be alleged on information and belief, and as to such matters deponent believes the same to be true. [That deponent is the agent of said landlord, and that the reason why this verification is not made by the landlord in person, is that the matters herein stated are better known to this deponent, by reason of such agency, than they are to said landlord.]

Sworn to before me, this
day of , .

1181. Petition to Remove Tenant Holding Over.

[As in preceding form to *, and from thence as follows:] for the term of from the day of , , which said term has expired. That said tenant, and the assigns of said tenant, undertenants, or legal representatives, hold over and continue in possession of the said premises , after the expiration of his [or, their] said term, without the permission of the landlord.

WHEREFORE, your petitioner prays that a precept may be duly issued [and continue as in preceding form].

1182. Petition to Remove Tenant at Will.

[As in Form No. 1180 to *, and from thence as follows:] for the term of , from the day of , , which said term has expired.

And that the said tenant, and the assigns of said tenant, undertenants, or legal representatives, has or have held and occupied the said premises as the tenant at will of your petitioner , from the day of said letting and renting, until the expiration of such tenancy as hereinafter more fully stated.

And that your petitioner caused, on the day of , a notice in writing to be served upon the said tenant and the assigns of said tenant, undertenants, or legal representatives, requesting them to remove from the said premises within one month.

That the time within which said tenant and the assigns of said tenant, undertenants, or legal representatives, were required to remove, has expired. That the said tenant and the assigns of said tenant, undertenants, or legal representatives, hold over and continue in possession of the said premises after the expiration of his or their said term, without the permission of the landlord.

WHEREFORE, your petitioner prays, etc. [*continue as in Form No. 1180.*]

1183. General Form of Precept Issued on Foregoing Petitions.

THE COURT OF THE CITY OF .

| | | |
|---------|--------------|---|
| against | Landlord, | } |
| | Tenant. | |
| | Undertenant. | |

THE PEOPLE OF THE STATE OF NEW YORK, TO , AS ABOVE DESCRIBED, TENANT, AND EACH AND EVERY PERSON IN POSSESSION OF THE DEMISED PREMISES HEREINAFTER MENTIONED, OR CLAIMING THE POSSESSION THEREOF, GREETING:

You and each of you, hereinbefore named or otherwise described, are, pursuant to the statutes in such case made and provided, hereby required forthwith to remove from the premises designated and described as follows, viz.: rooms, number , on the floor, side in house and premises known as No. , street, in the city of , or show cause before the court of the city of , to be held in the , in , at the court room, in said of said city, on the day of , at o'clock in the noon of that day, why the possession of said property or premises should not be delivered to the petitioner or landlord named in the petition now on file with the clerk of this court, and upon whose application this precept is issued, and why the further prayer of such petitioner should not be granted.

WITNESS, , Esq., one of the justices of our said court, at the city of , and dated the day of ,
Clerk of said court.

1184. Affidavit of Personal Service of Precept.

CITY AND COUNTY OF , ss.
 , being duly sworn, says he is twenty-one years of age and upwards, and a resident of said city, and that he did on the day of , 189 , at o'clock and minutes in the noon, at No. , street,

in the said city, serve the annexed precept, on _____, the tenant therein named, * by delivering to h_____ personally, a true copy thereof, and at the same time showing h_____ the original, and that he knew the person so served to be the person mentioned and described as tenant in said precept.

Sworn to before me, this

day of _____, _____.

Notary Public.

Commissioner of Deeds.

1185. Same; Substituted Service of Precept.

[As in preceding form to *, and from thence as follows:] by leaving a true copy thereof, at h_____ dwelling-house, the demised premises within named, No. _____, street, in the said city, with _____, who is a person of suitable age and discretion, who, at the time of said service, was on, and who resides on the said premises, at the same time showing h_____ the original, the said tenant being at the time absent from h_____ said dwelling-house and from said demised premises, and he could not after due and diligent search be found; that a copy of section 2241 of the Code of Civil Procedure was indorsed upon said copy precept.

Sworn to before me this

day of _____, _____.

Notary Public.

Commissioner of Deeds.

1186. Same; by Affixing Precept in a Conspicuous Place.

[As in Form 1184, to *, and from thence as follows:] by affixing a true copy thereof, upon a conspicuous part, to wit: [the entrance door] of the demised premises in the within affidavit and summons described; that at the time of said service _____, the said tenant was absent from h_____ last or usual place of residence and from said demised premises, and could not be found after due and diligent search; that he could not find any person at such place residing on the premises; that he could not find the said tenant upon the said demised premises; and further, that he could not find upon said demised premises any person of mature age, residing thereon or connected therewith by employment in any business for which the said premises are used, on whom he could serve the same; that a copy of section 2241 of the Code of Civil Procedure, was indorsed upon said copy precept.

Sworn to before me, this

day of _____, 19 _____.

Notary Public.

Commissioner of Deeds.

1187. General Form of Warrant to Dispossess.

TO THE SHERIFF OF THE _____ OF NEW YORK, OR TO ANY MARSHAL OF THE
CITY OF _____, GREETING:

WHEREAS, heretofore, by the petition of _____, duly presented to the court of the city of _____, an application was made in behalf of the landlord of the premises hereinafter named, for, * among other things, a final order of said court to remove _____, tenant, and all persons from rooms, number _____, on the _____ floor, _____ side, in the _____ house and premises known as No. _____, _____ street, in the _____ ward, in the city of _____, alleging that said tenant and those claiming the possession of said premises under said tenant, did hold over and continue in possession thereof, as set forth in said petition now on file and of record in said court; and without the permission of said landlord, or the petitioner. Whereupon a precept was duly issued out of said court, directed to said tenant, and each and every person in possession of said premises or claiming the possession thereof, requiring them and each of them to forthwith remove from said premises, or to show cause before said court at a place designated by law for holding said court, at a certain time now past, why the possession of said premises should not be delivered to the petitioner; and no good cause having been shown, or in any way appearing to the contrary, and the proof of the service of such precept having been presented to said court, said court did thereupon render judgment and made a final order awarding, among other things, to the petitioner the delivery of the possession of the said property.

THEREFORE, in the name of the people of the state of _____, you are hereby commanded to remove _____ from the said premises, and put the petitioner in the said petition named in the full possession thereof.

WITNESS, _____, one of the justices of the said _____ court, of the city of _____, this _____ day of _____, _____.

Justice, etc.

1188. Return of Officer.

Pursuant to the command of the within warrant, I have this day put the petitioner in said petition named, into full possession of the premises within mentioned.

Dated _____, _____.

Marshal.

1189. Precept to Summon a Jury.

COUNTY OF _____, ss.

TO THE SHERIFF [or, as in Form 1187], GREETING:

WHEREAS, I, the undersigned [*title of magistrate*], for the purpose of forming a jury to try certain matters in controversy between A. B., landlord, and Y. Z., tenant, have in due form of law nominated [*here name the jurors*] twelve reputable persons, qualified to serve as jurors in courts of

record: You are, therefore, hereby commanded, in the name of the people of the state of New York, to summon the above-named persons so nominated, to appear before me, at my office in _____, on the _____ day of _____, _____, to try the said matters in difference. [Signature.]

[Date.]

1190. Warrant to Dispossess After Verdict Against the Tenant.

[This may be framed substantially as in Form 1187, inserting the following recital:]

AND WHEREAS, on [or, before] the time appointed in such summons, the said Y. Z., being in [or, claiming] possession of said premises, having filed an affidavit with me, the undersigned, who issued said summons, denying [some of] the facts upon which said summons was issued; and a jury having been regularly nominated, summoned, drawn, and sworn, in pursuance of the statute, to determine the matters controverted between the said parties; and the said jury after hearing the proofs and allegations of the parties, and being kept together by a proper officer duly sworn until they were agreed on their verdict, having found a verdict in favor of the said A. B.

III. FORCIBLE ENTRY AND DETAINER.

1191. Complaint for Forcible Entry and Detainer.

COUNTY OF _____, ss.

A. B., of _____, in said county, complains to [here insert name and title of magistrate], and shows that Y. Z., of _____ aforesaid, on the _____ day of _____, in the year _____, at _____, in the county aforesaid, unlawfully made a forcible entry into the lands and possession of this complainant—to wit [here describe the premises], and then and there with a strong hand and with a multitude of people, did violently, forcibly, and unlawfully eject and expel the complainant from his said lands and possessions, wherein this complainant had at the time aforesaid an estate of freehold [or other estate or right of possession, as the case may be], then and still subsisting; and that the said Y. Z. still holds and detains the said lands and possession from the complainant unlawfully, forcibly, and with a strong hand, and against the statute. [Signature.]

[Date.]

1192. Affidavit Accompanying the Foregoing Complaint.

COUNTY OF _____, ss.

A. B., of _____, the complainant above named, being duly sworn, says that the matters stated in the foregoing complaint are true to his knowledge, and that he had an estate of freehold [or other estate or right of possession] in the said _____ at the time of the said forcible entry and detainer, which then was and still is subsisting. [Signature.]

Sworn [etc., as in Form 1184.]

CHAPTER XXXVII.

LEASES.

Writing and recording.—By the Statute of Frauds, leases of lands for a period exceeding three years must be in writing, subscribed by the party sought to be charged thereby, or by his agent authorized in writing. This statute has, however, been modified in some of the states in respect to the number of years of leases to which it is to apply. Thus, in New York (and most of the states) leases for a period exceeding one year must be in writing. In Indiana, New Jersey, North Carolina, Pennsylvania, Tennessee and Wisconsin leases for more than three years, and in Maryland for more than seven years, and in Porto Rico for six years, must be in writing. In Louisiana leases may be made either by written or verbal contract. In Hawaii, Idaho, Maine, Massachusetts, Missouri, New Hampshire, New Mexico, Ohio, Vermont and Washington, all leases must be in writing. In the other states and territories leases for more than one year must be in writing.

In the same way, the rule as to which leases should be recorded varies in the different states. In New York, a lease for a period exceeding three years should be recorded. In some other states, the rule only applies to leases for more than seven years.

In the state of New York, leases of agricultural lands for more than twelve years are prohibited; in Iowa for more than twenty; in Montana and North Dakota for more than ten. In California no lease for agricultural or horticultural purposes for more than fifteen years is valid.

Leases for more than one year must be recorded in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kansas, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont and Washington.

Leases for one year must be recorded in Florida.

Leases for more than three years must be recorded in Indiana, Michigan, Minnesota, New York, North Carolina, Tennessee and Wyoming.

Leases for five years must be recorded in Georgia; and for more than five years in Virginia and West Virginia.

Leases for more than seven years must be recorded in Maine, Maryland, Massachusetts and New Hampshire.

In Missouri, New Mexico, Ohio and Porto Rico all leases must be recorded.

In Delaware and Pennsylvania leases for more than twenty-one years must be recorded, and in New Jersey leases for more than ten years.

In Kentucky, an oil, gas, coal or mineral lease for more than five years and any other lease for more than one year must be recorded.

In the Philippine Islands there is no provision as to the recording of leases.

Covenants.—The obligation to repair depends upon the terms of the lease. Under the ordinary covenant, in a lease to keep the premises in good and sufficient repair, the lessee is bound to do substantial repairs; but if the house was dilapidated at the commencement of the lease, the lessee is not bound to restore it in an improved state; but he must keep it in the state in which it was at the commencement of the lease, by the timely expenditure of money and care.

In the absence of any special stipulation, the lessee is not bound to rebuild a house accidentally burned down; but if he enters into a general covenant to

repair, without any exception, he is liable to restore any house or building which may be destroyed by fire, tempest, lightning, or any other accident.

A tenant who is under no obligation to do substantial repairs cannot require the landlord to do them.

But by statute in New York, the rent ceases, if the premises are destroyed by the elements, or become otherwise untenable.¹

If it is intended that the lessee shall insure the premises, there should be an express covenant to that effect on his part, which should specify in whose name the insurance is to be, and the amount of the insurance. It is best also to name the company, or provide that the company shall be one approved by the lessor.

The lessee should be bound to deliver or produce to the lessor the insurance policy and the receipts for the premiums.

A lease often contains a covenant by the lessee not to assign or underlet without the lessor's license. Such a covenant does not prevent a bequest of the term. And a deposit of a lease by way of security is not a forfeiture of a condition "not to underlet, alien, sell, assign, transfer, and set over or otherwise part with" the lease or premises without the license of the lessor. A covenant not to underlet is not broken by an assignment; and a covenant not to assign or otherwise put away the lease or premises does not prevent the lessee from granting an underlease. A covenant not to grant, let, assign, charge, or dispose of the premises, is not broken by the lessee giving a warrant of attorney to enter up judgment against him by way of security for *bona fide* debts.

Conditions.—Where matters on either side are intended to be conditions, so that a nonperformance will give the other party a right to annul any obligation imposed upon him, it is best that such obligation should be expressly stated to be conditioned upon the performance of the matter in question.

Fixtures.—The intent of the parties as expressed in the lease generally governs the right for the removal of fixtures. If no intent is expressed, the modern law allows the tenant to remove all fixtures, if, in so doing, he leaves the premises substantially in the previous condition. The law also allows the removal of fixtures put on the premises for trade or manufacture purposes.

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¹ Real Property Law, § 227; Birdseye, C. & G. Cons. Laws, p. 5046.

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1194. Landlord's Certificate of Renting.

THIS IS TO CERTIFY, that I have, this day of , 19 , let and rented unto Y. Z., of [here insert brief description of premises — e. g.,

thus:] the dwelling-house known as No. , in street, in the town of , with the appurtenances, and the sole and uninterrupted use and occupation thereof for year , to commence the day of , 18 , at the yearly rent of dollars, payable quarterly on the usual quarter days [or, on the first days of May, August, November, and February, in each year] — [add, if so agreed, and all taxes and assessments are to be paid by him].* [Signature of landlord.]

1195. Tenant's Certificate of Hiring.

THIS IS TO CERTIFY, that I have, this day of , , hired and taken from A. B., of , the dwelling-house and lot known as No. , in street, in the of , with the appurtenances, for the term of year , to commence the day of next, at the yearly rent of dollars, payable quarterly on the usual quarter days [or, on the first days of May, August, November, and February, in each year]. And I do hereby promise to make punctual payment of the rent in manner aforesaid * [except in case the premises become untenable, from fire or any other cause, when the tenancy and the rent is to cease]: And I do further promise to quit and surrender the premises at the expiration of the term or tenancy, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

[Signature of tenant.]

1196. Security for Rent.

IN CONSIDERATION of the letting of the premises above described, and for the sum of one dollar, I do hereby become surety for the punctual payment of the rent, and performance of the covenants in the above-written agreement mentioned, to be paid by Y. Z., as therein specified; and if any default shall at any time be made therein, I do hereby promise and agree to pay unto the landlord in said agreement named, the said rent, or any arrears thereof that may be due, and fully satisfy the conditions of the said agreement, without requiring notice or proof of demand to be made.

GIVEN under my hand and seal, the day of , .

[Signature and seal.]

1197. Landlord's Certificate, Where Tenant is Not to Underlet nor Occupy for Certain Businesses.

THIS IS TO CERTIFY, that I have, this day of , , let and rented unto Y. Z., of [here insert brief description of premises — e. g., thus:] the dwelling-house known as No. , in street, in the city of , with the appurtenances, and the sole and uninterrupted use and occupation thereof for year , to commence the day of , 18 , at the yearly rent of dollars, payable quarterly on the usual quarter days [or, on the first days of May, August, November, and February, in each year] — [add, if so agreed, and all taxes and assessments are to be paid by him].* The premises are not to be used or occupied, except as a private boarding-house [or, for any business deemed extra-hazardous on account of fire, or otherwise, as may be agreed]; nor shall the same, or any part thereof, be let or underlet, except with the consent of the landlord, in writing, under the penalty of forfeiture and damages. [Signature of landlord.]

1198. Tenant's Certificate in Same Case.

THIS IS TO CERTIFY, that I have, this day of , , hired and taken from A. B., of , the dwelling-house and lot known as No. , in street, in the city of , with the appurtenances, for the term of year , to commence the day of next, at the yearly rent of dollars, payable quarterly on the usual quarter days [or, on the first days of May, August, November, and February, in each year]. And I do hereby promise to make punctual payment of the rent in manner aforesaid * [except in case the premises become untenable from fire or any other cause, when the tenancy and the rent are to cease]. And I do further promise to quit and surrender the premises, at the expiration of the term or tenancy, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And I further promise not to let or underlet the said premises, nor any part thereof, nor to occupy the same, except for [nor in any business deemed extra-hazardous, on account of fire, or otherwise, as agreed], without the written consent of the landlord, under the penalty of forfeiture and damages.

[Signature of tenant.]

1199. Provision That the Tenant May Surrender if the Premises Become Untenable.

[Insert in the certificate of each party at the *, the following:] but in case the building on said premises shall, without any fault or neglect on his [or, their] part, be destroyed, or be so injured by the elements, or any other cause, as to be untenable and unfit for occupancy, the tenant shall not be liable or bound to pay rent to the lessor or owner thereof, for the time after such destruction or injury, and may thereupon quit and surrender possession of the premises.

[Signature of tenant.]

1200. Provision as to Repairs.

[Insert in certificates of each party the matters agreed — e. g., thus:] And it is further agreed that said A. B. is to put in a furnace before the day of , and to put up the fences forthwith; and that said Y. Z. may retain the first quarter's rent, laying it out in painting the outside of the house, and the overplus, if any, otherwise in necessary repairs and about the house.

1201. Provision for Forfeiture and Damages.

[Insert at the end of tenant's certificate the following:] And in case of not complying with any of the covenants contained herein, the lessor, at his option, shall have the power and the right of terminating and ending this lease immediately, and I agree to pay to the said lessor the sum of dollars, as and for liquidated damages, and not as and for a penalty.

[Signature of tenant.]

1202. Tenant's Certificate Pledging His Chattels on the Premises as Security.

[As in Form 1195, inserting the following at the end:] And I do hereby pledge and mortgage to the said A. B. all my personal property of what kind soever which is or may be on the premises aforesaid, for the faithful performance of the covenants herein, hereby authorizing the said A. B., in case of a

failure on my part to perform all or any of said covenants, to take said property so pledged, and sell the same, and out of the proceeds of such sale to pay and discharge all rent, damages, and expenses, which may at such time be due, and to pay over to me or my assigns the surplus moneys arising from such sale. [Signature of tenant.]

1203. Security for Rent and Performance of Covenants.

IN CONSIDERATION of the letting of the premises above described, and for the sum of one dollar, I do hereby become surety for the punctual payment of the rent, and performance of the covenants in the above-written agreement mentioned, to be paid and performed by Y. Z., as therein specified; and if any default shall at any time be made therein, I do hereby promise and agree to pay unto the landlord in said agreement named the said rent, or any arrears thereof that may be due, and fully satisfy the conditions of the said agreement, and all damages that may accrue by reason of the nonfulfilment thereof without requiring notice or proof of demand being made.

GIVEN under my hand and seal, the day of ,
[Signature and seal.]

1204. Short Form of Lease.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part, WITNESSETH: That the party of the first part has hereby let and rented to the party of the second part, and the party of the second part has hereby hired and taken from the party of the first part [*here insert brief description of the premises — e. g., thus:*] all those three brick warehouses and premises known as Nos. 9, 11, and 13 King street, in the city of , with the appurtenances, for the term of years, to commence the day of , at the yearly rent of dollars, payable in equal quarterly payments on the usual quarter days [*or, on the first days of May, August, November, and February*], in each year.* AND IT IS AGREED, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom [*may add, the party of the first part hereby waiving any notice to quit, or of intention to re-enter, under the statute*].

And the said party of the second part covenants to pay to the said party of the first part the said rent, as herein specified, and that at the expiration of the said term, or other determination of this lease, the said party of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted; and the said party of the first part covenants that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

IN WITNESS WHEREOF, the parties hereto have hereunto interchangeably set their hands and seals, this day of , one thousand nine hundred and .
[Signatures and seals.]

Signed, sealed, and delivered in the presence of
[Signature of witness.]

1205. The Same; With Restrictions on Occupancy and Subletting, and With Fire Clause.

[As in the preceding form to the *, continuing thus:] And the party of the second part hereby covenants to and with the party of the first part to make punctual payment of the rent, in the manner aforesaid, and quit and surrender the premises at the expiration of said term, or other determination of this lease, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted; and further covenants, that he, the party of the second part, will not use or occupy said premises for any business or purpose deemed extra-hazardous on account of fire.

And the said party of the second part further covenants, that he will permit the said party of the first part, or his agent, to enter said premises, for the purpose of making repairs or alterations, and also to show the premises to persons wishing to hire or purchase; and on and after the first day of February next will permit the usual notice of "to let," or "for sale" to be placed upon the walls of said premises, and remain thereon, without hindrance or molestation; and also, that if the said premises, or any part thereof, shall become vacant during the said term, the said party of the first part may re-enter the same, by either force or otherwise, without being liable to any prosecution therefor; and re-let the said premises as the agent of the said party of the second part, and receive the rent thereof, applying the same, first to the payment of such expense as he may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance, if any, to be paid over to the said party of the second part.

And the said party of the second part further covenants, that he will not assign this lease or underlet the said premises, or any part thereof, to any person or persons whomsoever, without first obtaining the written consent of said party of the first part; and in case of not complying with this covenant, the party of the second part agrees to forfeit and pay to the party of the first part the sum of dollars, as and for liquidated damages, which are hereby liquidated and fixed as damages and not as a penalty.

This lease is made and accepted on this express condition, that in case the party of the second part should assign this lease, or underlet the said premises, or any part thereof, without the written consent of the party of the first part, that then the party of the first part, his heirs or assigns, in his or their option, shall have the power and the right of terminating and ending this lease immediately, and be entitled to the immediate possession of said premises, and to take summary proceedings against the party of the second part, or any person or persons in possession as tenant, having had due and legal notice to quit and surrender the premises, holding over their term.

And it is further agreed, that in case the building on said premises shall, without any fault or neglect on his part, be destroyed, or be so injured by the elements, or any other cause, as to be untenable and unfit for occupancy, the tenant shall not be liable or bound to pay rent to the lessor or owner thereof, for the time after such destruction or injury, and may thereupon quit and surrender possession of the premises.

IN WITNESS [etc., as in Form 1204].

[Security, if any, as in Form 1196 or 1203.]

1206. Another Form; With Provisions for Re-Entry and Re-Letting, Tenant to Pay Water-Tax and Fire-Risk, and Have Privilege of Renewal.

[As in Form 1204 to the *, continuing thus:] Provided, nevertheless, that if the rent, or any part thereof, shall be unpaid, on any day whereon the same ought to be paid, as aforesaid, or if the said premises shall become vacant during the term hereby granted, or if default shall be made in any of the covenants herein contained, on the part of the tenant, then it shall be lawful for the lessor or his assigns, into and upon said demised premises, to re-enter and remove all persons therefrom, and to recover the possession thereof by legal proceedings, or to re-enter the same, and use such force for the purpose as he or they shall think fit, without being liable to any prosecution or indictment therefor, and the same to re-possess as in their former estate; or, in case he or they shall think proper, may re-let the same as agent of the tenant, in the name of the tenant or of the lessor, applying the avails thereof first to the payment of the expenses of re-entering, and then to the payment of the rent reserved by this lease, and the balance, if any, to pay over to the tenant; and the tenant covenants to pay to the lessor any deficiency between the amount received on such re-letting and the rent reserved by this lease. And it is further agreed, that in case of re-entry by the lessor, and whether he shall re-let as agent of the tenant or not, that the tenant shall be liable to the lessor for a sum equal to the rent hereby reserved, and payable at the same periods, less any sum that shall be received by the lessor as rent of said premises for the said periods. And the tenant covenants not to assign or underlet the said premises, nor any part thereof, nor make any alterations therein, nor follow nor suffer to be carried on therein, any business other than , and to keep the Croton fixtures on said premises in repair at his own expense; and that after the day of , he will permit the lessor, or any person by his order, to put a notice on said premises that the same are for sale or to let, and to keep the same on so long as the lessor shall think necessary; and after said day to permit applicants for the said premises freely to enter, examine, and leave on week days, from A. M., till

P. M. And he further covenants to pay to the lessor as rent, in addition to that hereinbefore reserved, on the first day of August, in every year, a sum equal to that which shall be imposed as tax or rent for the Croton water; and in case the fire risk on said premises shall be increased above what the insurance companies of the city of term hazardous, to pay a further sum, on the first day of , in every year that this shall occur, equal to the increased charge of insurance on a value of dollars. It is further agreed, that the lessor shall not be liable for any repairs to said premises, nor for any change in their condition; and that on the last day of the said term, or other sooner determination of the estate hereby granted, the tenant will peaceably and quietly leave and surrender the said demised premises in as good condition as they now are or hereafter shall be put, damage by fire and the elements excepted. And it is further agreed, that the tenant shall have the option of extending this lease for a further period of years, if the ground is not required by the lessors for their own use.

IN WITNESS [etc., as in Form 1204].

[Security, if any, as in Form 1196 or 1203.]

1207. Indenture of Lease.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained, on the part and behalf of the party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, * has leased, demised, and to farm let, and by these presents does lease, demise, and to farm let, unto the said party of the second part, his executors, administrators, and assigns, all [*here insert description of premises*]:

To HAVE AND TO HOLD the said above-mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the day of , one thousand nine hundred and , for and during, and until the full end and term of years thence next ensuing, and fully to be complete and ended, yielding, and paying therefor, unto the said party of the first part, his heirs or assigns, yearly, and every year, during the said term hereby granted, the yearly rent or sum of dollars, lawful money of the United States of America, in equal quarter [*or, half*] yearly payments — to wit, on the day of [*naming the months intended*], in each and every year during the said term: Provided, always, nevertheless, that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid, on any day of payment whereon the same ought to be paid, as aforesaid; or if default shall be made in any of the covenants herein contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, into and upon the said demised premises, and every part thereof, wholly to re-enter, and the same to have again, repossess, and enjoy, as in his or their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

AND THE SAID PARTY OF THE SECOND PART, for himself and his executors and administrators, doth covenant and agree, to and with the said party of the first part, his heirs and assigns, by these presents, that the said party of the second part, his executors, administrators, or assigns, shall and will, yearly, and every year, during the term hereby granted, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved, on the days, and in the manner, limited and prescribed, as aforesaid, for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents: [*if so agreed, add, and that the said party of the second part, his executors, administrators, or assigns, shall and will, at their own proper costs and charges, bear, pay, and discharge all such taxes, duties, and assessments whatsoever, as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said described premises:*] and that on the last day of the said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will peaceably and quietly leave, surrender, and

yield up, unto the said party of the first part, his heirs or assigns, all and singular the said demised premises.

AND THE SAID PARTY OF THE FIRST PART, for himself, his heirs and assigns, doth covenant and agree, by these presents, that the said party of the second part, his executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid, on his and their part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises, without any let, suit, trouble, or hindrance, of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

IN WITNESS [etc., as in Form 1204].

1208. Landlord's Certificate of Letting Farm With Stock and Tools.

THIS IS TO CERTIFY, that I have, this day of , , let and rented unto Y. Z., of , in the county of , a certain farm situate in the town and county aforesaid, and bounded as follows [*description*]; with the appurtenances, and also with the use, profits, and behoof of the following-named stock and farming utensils, cattle, horses, and stock now being or to be on the said premises above described, on and from the day of , , during the time below stated—viz., one span of horses and two set of harness, one pair cattle, one lumber wagon, and all the farming utensils on the said farm now remaining and being, and the sole and uninterrupted use and occupation thereof, for the term of from the day of , , at the yearly rent of dollars, payable on the first day of January [with the refusal of the same for five years more at the same rent, upon said Y. Z. giving me notice in writing of his intention to renew the lease on or before the day of ,].

[Date.]

[Signature.]

1209. Tenant's Certificate of Same.

THIS IS TO CERTIFY, that I have, this day of , , rented of A. B., of , his farm [*describing it*], and have agreed to the following covenants—viz., that I will seed well with timothy and clover seed all the land west of the brook which is broken up; that I will leave the manure on the farm; that I will pay for the sawing of such lumber as may be needed on the farm, the logs being at the mill; that I will draw said lumber, and at my own expense construct a good fence therewith the whole length of the new road on the west side, on or before the day of , ; that I will pay, or cause to be paid, the road and land tax on the same. I also promise to use the horses, oxen, wagons, sleighs, and other tools carefully, and to return them in as good condition as they are now, the necessary wear excepted, together with possession of the farm and buildings, on the day of , .

[Date.]

[Signature.]

1210. Lease of Mill; With Proviso Suspending Rent in Case of Its Ceasing to Run.

[As in other forms to the description of the premises, continuing thus:] the mill of the party of the first part, now run by M. & N., which

is feet in length, and contains looms, being one of the mills known and designated as the Ida Mills, in the city of ; together with all the machinery now in the same belonging to the said party of the first part, and all stoves, boilers, and fixtures, and every article now in the said mill which appertains to the same, and is necessary to its successful operation; and also all the dwelling-houses and storehouses used in connection with said mill, which now belong to the said party of the first part. And the said party of the first part further agrees to pay all taxes and insurances on said premises, and to furnish water power, water wheels, main shafting, and gearing sufficient at all times to keep in constant and full operation said mill, and all the running works of the same, and all machinery driven by water power now in said mill. And the said party of the first part further agrees to secure to the said party of the second part the quiet and peaceable possession of all and every part of said premises, machinery, and tools, and all grounds appertaining to said mill, and all passage-ways to and from the same, which are now used and may be necessary for the accommodation of the same, for years from the first day of next.

It is mutually understood and agreed between the parties hereto, that in case said mill should be necessarily stopped from casualty, or in case there shall be a want of or failure of water power, the rent above mentioned to be paid shall cease, and not be chargeable during the continuation of such stoppage, want, or failure.

1211. Lease of a Manufactory and Premises for Carrying On the Business of Making and Selling Cements.

THIS INDENTURE, made this day of , between A. B., of of the first part, and Y. Z., of , of the second part, WITNESSETH: That in consideration of the rent and royalties hereinafter reserved, and of the covenants hereinafter contained, and on the part of the said Y. Z., his executors, administrators, and assigns, to be observed and performed, he, the said A. B., hereby grants and demises unto the said Y. Z., his executors, administrators, and assigns — First, all that tenement chiefly used as an engine-house, situate in and fronting street, in the city of , which said premises are more particularly delineated in the map or plan hereto annexed, and therein colored blue; and the use and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises. And secondly, all and singular the manufactories, buildings, boiler-houses, kilns, erections, offices, buildings, and premises situate between street and quay, in the said city of , which said premises secondly hereinbefore described are more particularly delineated in the said map or plan, and therein colored red; and the use and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises secondly hereinbefore described [excepting, nevertheless, and reserving unto the persons in favor of or to whom the same have previously to the date of these presents been excepted and reserved, their executors, administrators, and assigns, all the rooms which form the upper story of the several buildings hereby demised, and the absolute use and enjoyment thereof, whether for the purposes of business or otherwise, and unto the same persons, their executors, administrators, and assigns, and unto their servants, workmen, or any other persons on their behalf; and, as to the piece

of land colored brown in the said map, either on foot or by means of carts or other vehicles, horses, or other animals, full and free right and liberty of ingress, egress, regress, passage, and way at all times over the said piece of land colored brown on the said plan from the point at which the said piece of land adjoins the wharf, and by all the other internal and external passages and ways by which the said rooms respectively are or can be now approached from the said street from the point aforesaid]:

TO HAVE AND TO HOLD all the said premises hereby demised, or expressed so to be, unto the said Y. Z., his executors, administrators, and assigns, for the term of years from the day of next: YIELDING and paying in respect of the premises hereby demised, every year during the said term of years, the clear yearly rent of dollars, and yielding and paying every year during the said term a royalty of per bushel in respect of all cements which shall be made or manufactured and sold by the said Y. Z., his executors, administrators, or assigns, or any person or persons on his or their behalf, either on the premises hereby demised or on any part thereof, or on any other premises, or in any other place or places whatsoever, such rent and royalties to be paid by equal quarterly payments on the day of , the day of , the day of , and the day of , clear of all deductions, the first quarterly payment of the said rent and royalties respectively to be made on the day of next. AND THE SAID Y. Z. hereby, for himself, his heirs, executors, administrators, and assigns, covenants with the said A. B., his executors, administrators, and assigns, that the said Y. Z., his executors, administrators, and assigns, shall and will, during the said term, pay the said rent and royalties respectively on the said days of payment whereon the same respectively are hereinbefore made payable, without any deduction, and also pay and discharge all present and future taxes, charges, rates, and assessments upon the said premises hereby demised, or on the occupier or occupiers thereof in respect of the same, and will at all times keep indemnified the said A. B., his heirs, executors, administrators, and assigns, from the payment thereof respectively; and further, that the said Y. Z., his executors, administrators, and assigns, shall and will, at all times during the said term of years, carry on, within the said city of , the business of making or manufacturing cements and selling the same there and elsewhere to the best possible advantage; and shall and will at all times during the said term keep proper books of account on the said premises hereby demised, or on some part thereof, and shall from time to time make such entries therein as shall clearly show the quantity of cement which shall from time to time be manufactured and sold by him or them, or any person or persons on his or their behalf, and also the amount of royalties which shall from time to time become payable in respect thereof, and also all other matters which ought to be entered in such books in relation to the said business; and shall and will on the first day of every month during the said term, at his or their own expense, supply the said A. B., his executors, administrators, and assigns, with a proper and faithful account, in writing, of all the cements which shall have been manufactured or sold as aforesaid during the then preceding month, together with all vouchers and such other evidence as may be required in order clearly to show the accuracy of such account, and shall and will, if and when required so to do by the said A. B., his executors, administrators, or assigns, further evidence the accuracy of

every such account by the oath or affirmation of the said Y. Z., his executors, administrators, or assigns; and shall and will on every quarter day during the said term during which the royalties hereby reserved are made payable by these presents, pay the full amount of the royalties which shall have become payable in respect of all the cements which shall have been manufactured or sold during the then preceeding quarter of a year. And further, that in case the said rent and royalties hereby reserved, or any of them, or any part thereof respectively, shall at any time or times during the said term, fail to be paid at the times and in the manner hereinbefore provided for this purpose, then (in addition to the powers of distress and entry which he or they may possess independently of any special clause to this effect) it shall be lawful for the said A. B., his executors, administrators, or assigns, into or upon the said premises hereby demised, or expressed so to be, or any part thereof, or any other premises wherein or whereupon the said business may for the time being be carried on, to enter and distrain for the same rent and royalties so in arrear, and the distress or distresses there found to impound and detain, sell, and dispose of in such manner as landlords are by law authorized to do in respect of arrears of rent reserved upon common demise, to the intent that the said A. B., his executors, administrators, or assigns, may, by such distress or distresses, be from time to time satisfied, all such rent and royalties as may be so unpaid as aforesaid, and all costs and expenses occasioned by nonpayment or default in payment thereof.

IN WITNESS [*etc., as in Form 1204*].

1212. Lease by Tenants in Common of Wharf, Machinery, Etc., With Covenants by Lessee for Repairs, and Proviso for Determining the Term at the End of Fourteen, Twenty-eight or Forty-two Years by Lessee, on His Giving Previous Notice.

THIS INDENTURE, made the day of , between A. B., of etc., lessor of one moiety of the premises, of the first part, C. D. of , lessor of other moiety of premises, of the second part, and Y. Z., of , lessee, of the third part.

WHEREAS, the said A. B. and C. D. are seized of and absolutely entitled to the messuage or dwelling-house, piece, or parcel of ground, warehouses, offices, erections, wharf, fixtures, machinery, and things hereinafter mentioned, and intended to be hereby demised, as tenants in common in equal shares; and,

WHEREAS, the said A. B. and C. D. have agreed to grant to the said Y. Z. a lease of the said premises, upon the terms and in the manner hereinafter expressed:

NOW THIS INDENTURE WITNESSETH: That in consideration of the rent hereinafter reserved, and of the covenants hereinafter contained, and on the part of the said Y. Z., his executors, administrators, and assigns, to be observed and performed, they, the said A. B. and C. D. (according to their respective moieties in the property intended to be hereby demised), do, and each of them does, hereby grant and demise unto the said Y. Z., his executors, administrators, and assigns, all that messuage or dwelling-house, etc., and also all that piece or parcel of ground, etc., with the warehouses, offices, or buildings, and other erections now standing and being thereon; and also all that wharf adjoining thereto, now called and known by the name of Wharf, situate,

lying, and being in _____, in the county of _____, and bounded [*here give boundaries*], and now in the occupation of _____, and all which said hereditaments and premises are more particularly described or delineated in the map or plan drawn in the margin of [*or, annexed to*] these presents. And also the use and enjoyment of all the machinery, cranes, fixtures, implements, utensils, and things which now are in or upon the said premises, and the particulars whereof are specified in the schedule hereto annexed:

To HAVE AND TO HOLD the said premises hereinbefore demised or expressed so to be, unto the said Y. Z., his executors, administrators, and assigns, from the _____ day of _____, for the term of sixty years thenceforth, yielding and paying therefor yearly, and every year during the said term of sixty years, the rent of _____ dollars, by equal half-yearly payments, on the _____ day of _____, and the _____ day of _____, in each year. And the said Y. Z. hereby for himself, his heirs, executors, administrators, and assigns, covenants in manner following: That the said Y. Z., his executors, administrators, and assigns, shall and will [*insert covenant, to pay rent and taxes, as above*], and also shall and will at all times, during the said term, at his and their own costs, as often as occasion shall require, well and sufficiently repair, support, maintain, and keep in good and substantial repair and condition the messuage, wharf, machinery, and premises hereby demised, or expressed so to be, and also all other the erections and buildings which shall at any time during the said term be erected and set up in or upon the said demised premises, and the same in such good and substantial repair and condition, shall and will, at the expiration or other sooner determination of the said term of sixty years, peaceably and quietly surrender and give up unto the said A. B. and C. D., their heirs and assigns, the reasonable use and wear thereof in the meantime only excepted. PROVIDE always, and it is hereby agreed and declared, that if the said Y. Z., his executors, administrators, or assigns, shall be desirous of determining the said term of sixty years, at the expiration of the first fourteen, twenty-one, or forty-two years of the said term, and of such his or their desire shall for that purpose deliver to the said A. B. and C. D., respectively, or their respective heirs or assigns, _____ months' previous notice in writing, and shall pay and discharge all arrears of rent, and perform all the covenants hereinbefore contained, and on his and their part to be observed and performed, then and in such case, at the expiration of the said terms of fourteen years, respectively, this present lease, and everything herein contained shall absolutely cease and determine to all intents and purposes.

IN WITNESS [*etc., as in Form 1204*].

1213. Mining Lease.

[*As in Form 1207 to the *, continuing thus:*] do grant and convey to the said party of the second part, his heirs, executors, administrators, and assigns, the right of entering in and upon the lands hereinafter described, for the purpose of searching for mineral and fossil substances, and of conducting mining and quarrying operations, to any extent he may deem advisable [for the term of _____ years, from the _____ day of _____,], [but not to hold possession of any part of said lands for any other purpose whatsoever], paying for the site of buildings [*or, designate other works*] necessary thereto, a reasonable rent. The said lands are situated [*here insert description*].

And the said party of the second part hereby agrees that he, his heirs, executors, administrators, or assigns, will pay or cause to be paid to the said party of the first part, his heirs or assigns [*here state payments*], and also covenants that no damage shall be done to or upon said lands and premises, other than may be necessary in conducting said operations. And the said parties of the first and the second part, each for themselves, their heirs, executors, administrators, and assigns, covenant and agree, and this indenture is made with this express proviso, that if no mineral or fossil substance be mined or quarried, as now contemplated by said parties, within the period of _____ years, from the _____ day of _____, then these presents, and everything contained herein, shall cease, and be forever null and void.

IN WITNESS [*etc., as in Form 1204*].

1214. Extension and Modification of Mining Lease, Which Has Been Assigned.

THIS INDENTURE, made this _____ day of _____, A. D. one thousand nine hundred and _____, by and between M. M., wife of A. M., of _____, in the county of _____, and state of _____, formerly Mrs. M. R., party of the first part, and Y. Z., of _____, party of the second part, WITNESSETH: That,

WHEREAS, the said party of the first part, by her then name of Mrs. M. R., on or about the _____ day of _____, one thousand nine hundred and _____, made and entered into a certain indenture of lease, bearing date on the day last mentioned, to A. A., of _____, aforesaid, wherein and whereby she leased and demised unto the said A. A. certain lands situate in the township of _____, in the county of _____, in the state of _____, which are therein particularly described, containing about _____ acres, together with the buildings, etc., thereon situate, which said lease was filed for record on the _____ day of _____, one thousand nine hundred and _____, and was recorded in the office for recording deeds, etc., for said county of _____, in deed-book B. B., page _____; the said lease having been given for the purpose of boring and mining for oil, salt, and other minerals, for and during the term of ninety-nine years from the date thereof, upon a royalty of one-eighth of the mineral product found or procured on, in, or under said leased lands, as by reference thereto will more fully appear; and,

WHEREAS, the said lease has been duly assigned by the said A. A. to the said Y. Z., and is now held and owned by him:

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and provisions herein contained, the said parties to this indenture have agreed and do hereby agree to and with each other as follows, namely: Said Y. Z. hereby covenants and agrees to and with the said party of the first part that she may have, hold, and possess and occupy the dwelling-house which was standing upon the said premises at the date of said lease, together with the outbuildings attached thereto, and also the cleared land of and upon said premises for occupation and use for all agricultural purposes, provided and upon condition that the same shall not interfere with, emharrass, hinder, or prevent the carrying on of the operations of the said party of the second part, in mining, boring, or opening for oil, salt, or any other mineral products of said lands; and also that she shall have the right and privilege of clearing or improving the said farm or any portion thereof for agricultural or farming purposes, during the continuance of said lease, upon the conditions above mentioned. The said party of the second part to be at liberty to construct

and carry on any mining operations, and to bore or open for oil, salt, or any other mineral products of said lands, in case he should find it necessary, or wish so to do, in any portion of the cleared land upon the said farm, notwithstanding the occupation thereof by said party of the first part for agricultural purposes, and interfering as little as may be with the occupation of said lands for agricultural purposes, and the said party of the second part hereby further agrees that if at the end of _____ years from the date hereof, he shall not then be successfully and profitably operating or mining said farm for oil, salt, or other minerals, that then he will quietly and peaceably abandon said farm, removing all machinery, tools, and improvements used or made for said mining purposes, and to promote its business, as expeditiously as may be practicable, and said lease shall then be null, void, and of no further effect. And the said party of the first part hereby covenants and agrees that the said lease of the _____ day of _____, one thousand nine hundred and _____, shall be and the same is hereby ratified, confirmed, continued, and extended upon the same royalty specified in the said original lease; and, further, that should this lease become null, void, and of no effect at the expiration of _____ years from the date hereof, that then the said party of the first part will release the said party of the second part from all further obligation, and permit him, or his legal representatives or assigns, quietly and peaceably to remove all machinery, tools, or improvements placed upon or made under this or the original lease to which reference is herein made, from said farm in such time and manner as may be practicable to said party of the second part.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above written. [SEAL.]

In presence of

[SEAL.]

1215. Covenant Not to Assign, etc.

And also that he, the said party of the second part, himself, his executors, administrators, or assigns, or any of them, shall not, nor will, at any time or times hereafter, during the term hereby granted, lease, let, or demise all or any part of the said premises hereby demised, nor assign, transfer, or make over the same, or this present lease, or any of his or their term or time therein to any person or persons whomsoever, without the consent of the said party of the first part, his heirs or assigns, in writing, under his or their seal, for that purpose first had and obtained, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

1216. Covenant to Renew.

It is further agreed, that at the expiration of the term above mentioned, [or, in the annexed lease mentioned], the said party of the first part hereby agrees to let and lease to the said party of the second part all the premises, machinery, and appurtenances in said lease mentioned, for another term of _____ years, at the same annual rent, and on the same conditions under which said party of the second part now holds said premises under and by virtue of the present lease; provided said party of the second part shall, at least [one year] before the termination of the present lease, notify the said party of the first part of his intention to hire said premises and appurtenances for such additional term.

1217. Covenant to Buy Fixtures at a Valuation.

And the said party of the first part hereby covenants and agrees to and with the said party of the second part, that at the expiration of the present lease, [or of the renewed lease, if the same shall be accepted], he will purchase of the said party of the second part all the machinery that shall have been placed by him in or upon the said premises during the whole time he shall have occupied the same, allowing therefor to the said party of the second part the full valuation at which such machinery shall then be estimated, in the buildings, and not for purpose of removal. And in case the parties hereto shall not agree upon such valuation, then the same shall be made by three disinterested persons, one of whom is to be chosen by each of said parties, and the other to be selected by the two so chosen, and the award of the majority of such persons shall be binding on the parties hereto.

1218. The Same; Another Form.

That if said company shall put into said buildings steam-boiler pipes and apparatus for the heating of said buildings by steam, and also shall put into that part of said buildings to be occupied by said company gas pipes and fixtures for lighting the same, then at the termination of said lease said executors shall, on demand, pay to said company, for said gas pipes and fixtures, the original cost thereof, without interest; and for said boiler, steam pipes and apparatus the then value of the same, as such value shall be determined by three competent and disinterested appraisers, one chosen by said executors and one by said company, and the third by the two so chosen, and the award of the majority of such persons shall be binding on the parties hereto. In default of such payment for any of said property so to be paid for as aforesaid, said company may at its election remove the same, but without causing unnecessary damage to said buildings. Said value of the boiler, steam pipes and apparatus shall be determined by their value in said buildings, and not their value when removed therefrom.

1219. Stipulation for Renewal by Indorsement.

And it is further agreed, that in case the said party of the second part shall, with the written consent of said party of the first part, indorse hereon or on the duplicate hereof, at any time hold over the said premises beyond the period above specified as the termination of this lease, then said party of the second part shall hold said premises upon the same terms and under the same stipulations and agreements as are in this instrument contained, and no holding over by said party of the second part shall operate to renew this lease without such written consent of said party of the first part.

1220. Proviso as to Re-Entry, With Waiver of Notice.

PROVIDED, HOWEVER, AND IT IS FURTHER AGREED, that if the said rent shall remain unpaid days after the same shall become payable as aforesaid, or if the said party of the second part shall assign this lease, or underlet or otherwise dispose of the whole or any part of said demised premises, or use the same for any purpose but that hereinbefore authorized, or make any alteration therein, without the consent of the party of the first part in writing, or shall commit waste, or suffer the same to be committed on said premises, or injure or misuse the same, then this lease shall thereupon, by virtue of

this express stipulation therein, expire and terminate, and the party of the first part may at any time thereafter re-enter said premises, and the same have and possess as of his former estate, and, without such re-entry, may recover possession thereof in the manner prescribed by the statute relating to summary process; it being understood that no demand for the rent, and no re-entry for condition broken, as at common law, shall be necessary to enable the lessor to recover such possession pursuant to said statute relating to summary process, but that all right to any such demand or any such re-entry is hereby expressly waived by the said party of the second part.

AND IT IS FURTHER AGREED between the parties hereto, that whenever this lease shall terminate, either by lapse of time or by virtue of any of the express stipulations therein, the said lessee hereby waives all right to any notice to quit possession, as prescribed by the statute relating to summary proceedings.

1221. Lease for Lives, at a Nominal Rent.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, and W. Z., his wife, of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the rents hereinafter mentioned, and also in consideration of love and affection, doth hereby grant, demise, and let unto the said parties of the second part, the brown-stone house, and the land on which the same is located, being forty-four feet front, and also the two vacant lots of ground adjoining thereto; the said premises being in street, between and avenues; and also the stable in the rear of said house, and fronting on street:

TO HAVE AND TO HOLD the said described premises with the appurtenances, including the household furniture therein, and also the library, fixtures, plate, paintings, statuary, and household furniture now in said house, unto the said parties of the second part jointly while they both shall live, and to the survivor while he or she shall live, they, he, or she paying therefor unto the said party of the first part the yearly rent of one dollar per annum on the first day of , in each and every year during said term, and commencing on the day of , in the year one thousand eight hundred and .

AND for the consideration aforesaid, the said party of the first part, for his heirs, executors, and administrators, further covenants and agrees to pay all taxes and assessments that may be imposed upon and be chargeable against the said premises, during the continuance of this lease, from year to year, as the case may be, and will also keep the said house and stable, and the goods and household furniture therein, at all times adequately insured.

AND the said party of the first part, for his executors and administrators, doth covenant and agree to and with the said parties of the second part, that the said parties of the second part, on paying the said yearly rent, shall jointly, while they both live, and the survivor while he or she shall live, at all times during the continuance of this lease, peaceably and quietly have, hold, and enjoy the said demised premises without any manner of suit, trouble, or hindrance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

IN WITNESS [etc., as in Form 1204].

1222. Under Lease.

[Follow other forms, except that after describing the premises, say:] being the same premises demised by M. N. to the party of the first part, by a lease bearing date the day of , [and among the covenants, add:] And the said [naming lessee], for himself, his heirs, executors, and administrators, hereby covenants with the said [lessor], his executors, administrators, and assigns, that he and they will truly pay, or cause to be paid, the yearly rent, reserved by the said lease so granted by the said M. N., as aforesaid, and observe and perform the covenants, conditions, and agreements therein contained, and will keep the said [lessor], his executors, administrators, and assigns, indemnified against the payment of the said rent, and the performance of the same covenants, conditions, and agreements, except so far as such covenants, conditions, and agreements are conformable to the covenants, conditions, and agreements hereinbefore contained on the part of, and which ought to be observed and performed by the said lessor, his executors, administrators, and assigns.

1223. Ground Lease, Twenty-one Years, With Covenants to Build, and for Renewals.

THIS INDENTURE, made this day of , , between the A. B. corporation, of the city of , of the first part, and Y. Z., of the city of , of the second part, * WITNESSETH: That the said parties of the first part, in consideration of the rents and covenants hereinafter reserved and contained, have granted, demised, and to farm let, and by these presents do grant, demise, and to farm let, unto the said party of the second part, all that certain lot of land, situate, lying, and being in the ward of the city of New York being part of the lands of the said parties of the first part, and distinguished [here insert description of the premises]:

TO HAVE AND TO HOLD the said lot of land, unto the said party of the second part, his executors, administrators, and assigns, from the day of , , for and during, and until the full end and term of years thence next ensuing, and fully to be complete and ended; yielding and paying for the same, yearly and every year during the said term, unto the said parties of the first part, their successors or assigns, the sum of dollars, lawful money of the United States, in two equal half-yearly payments; that is to say, on the first day of May and on the first day of November, in each and every year during the term hereby granted; the first payment to be made on the first day of now next ensuing; PROVIDED, always, that if it shall happen that the said yearly rent, or any part thereof, shall not be paid on any day on which the same ought to be paid as aforesaid, then and at all times thereafter, it shall and may be lawful to and for the said parties of the first part, their successors or assigns, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, and to repossess, have, and enjoy the same again as of their former estate and interest therein, anything herein contained to the contrary in anywise notwithstanding. And the said party of the second part, for himself, his executors, administrators, and assigns, does hereby covenant and agree, to and with the said parties of the first part, their successors and assigns, that the said party of the second part, his executors, administrators, and assigns, shall and will, half-

yearly, and every year during the term hereby granted, well and truly pay unto the said parties of the first part, their successors or assigns, the said rent hereby reserved, at the days and times hereinbefore limited for the payment thereof, without fraud or delay: And, also, that the said party of the second part, his executors, administrators, or assigns, shall and will, at his and their own proper cost and charges, bear, pay, and discharge all such duties, taxes, assessments, and payments, extraordinary, as well as ordinary, as shall, during the term hereby granted, be imposed or grow due and payable out of or for the said demised premises or any part thereof, by virtue of any present or future law of the United States of America, or of the state of _____, or of the corporation of the city of _____, or otherwise. And also, that the said party of the second part, his executors, administrators, or assigns, or any of them, shall not, nor will, at any time or times hereafter during the term hereby granted, lease, let, or demise, all or any part of the said premises, nor assign, transfer, or make over the same, or this present lease, or any of his or their term or time therein, to any person or persons whomsoever, without the consent of the said parties of the first part, their successors or assigns, in writing, under their seal, for that purpose first had and obtained, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; and also, that the said party of the second part, his executors, administrators, or assigns, or any of them, shall not, nor will, at any time hereafter during the term hereby granted, erect, make, establish, or carry on, nor cause or suffer to be erected, made, established, or carried on, in any manner, on any part of the above-described and hereby demised premises, any stable, slaughter-house, tallow chandlery, smith-shop, forge, furnace, or brass foundry, nail, or other iron factory, or any manufactory for the making of glass, starch, glue, varnish, vitriol, turpentine, or ink; or for tanning, dressing, preparing, or keeping skins, hides, or leather; or any distillery, brewery, sugar bakery, or any other manufactory, trade, business, or calling whatsoever, which may be in anywise noxious or offensive to the neighboring inhabitants; and lastly, that the said party of the second part, his executors, administrators, or assigns, shall and will, on the last day of the term hereby granted, or other sooner determination thereof, well and truly surrender and deliver up the said hereby demised premises into the possession of the said parties of the first part, their successors, or assigns, without fraud or delay. PROVIDED, always, that it shall be lawful for the said parties of the first part, their successors and assigns, when and as often as default shall be made in the payment of the said rent, or any part thereof, to distrain for the same, anything herein contained to the contrary notwithstanding. And provided, further, and this present lease is upon this express condition, that if the said party of the second part, his successors or assigns, shall at any time during the term hereby granted, erect, make, establish, or carry on, or cause or suffer to be erected, made, established, or carried on, in any manner, on any part of the above-described and hereby demised premises, any stable, slaughter-house, tallow chandlery, smith-shop, forge, furnace, or brass foundry, nail, or other iron factory, or any manufactory for the making of glass, starch, glue, varnish, vitriol, turpentine, or ink; or for tanning, dressing, preparing, or keeping skins, hides, or leather; or any distillery, brewery, sugar bakery, or any other manufactory, trade, business, or calling whatsoever, which may be in anywise noxious or offensive to the neighboring inhabitants; or shall fail

in the performance of any or either of the covenants, conditions, or provisions in these presents contained which, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are or ought to be observed, performed, fulfilled, and kept, then and from thenceforth, this present indenture and the estate hereby granted, and every clause, article, and thing herein contained, on the part and behalf of the said parties of the first part, to be performed, fulfilled, and kept, shall cease, determine, and be utterly void, to all intents and purposes whatsoever, anything herein contained to the contrary thereof in anywise notwithstanding. And the said party of the second part, for himself, his executors, administrators, and assigns, hereby further covenants and agrees, to and with the said parties of the first part, their successors and assigns, that he, the said party of the second part, his executors, administrators, or assigns, shall and will, within _____ years from the commencement of the term hereby granted, erect, and build, or cause to be erected and built, on the premises hereby demised, so as to cover the whole front thereof, a good and substantial dwelling-house, _____ stories high, to be covered with slate or metal, and the front thereof to be finished in such style as may be approved of by the said parties of the first part, their successors or assigns. And it is hereby mutually covenanted and agreed, by and between the parties to these presents, that if the said party of the second part, his executors, administrators, or assigns, shall and do, within _____ years from the commencement of the term hereby granted, erect and build, or cause to be erected and built, on the premises hereby demised, such dwelling-house as is above described, then the said parties of the first part, their successors or assigns, shall and will, at the end and expiration of the term hereby demised, grant, and execute unto the said party of the second part, his executors, administrators, or assigns, at his or their expense, a renewal of this lease, for the further term of twenty-one years thence ensuing, at such annual rent as shall be agreed upon by the said parties, their executors, administrators, successors, or assigns, respectively, in half-yearly payments (but not less than the rent above reserved); and in the event of their not agreeing upon such rent, each party shall choose a disinterested person to ascertain the same, which persons so chosen shall themselves respectively be owners, in fee-simple, of one or more lots of land in the neighborhood of the one hereby demised, and shall, in making their award or determination in the said premises, under oath, appraise and value the said lot of land hereby demised, at its full and fair worth or price at private sale, considering the same as an unincumbered vacant lot, and _____ per cent. on the amount of their said appraisement or valuation shall be the annual rent of the said lot of land for such further term; and in case the arbitrators should differ in the amount of their appraisement or valuation, as aforesaid, they shall then choose an umpire, qualified as aforesaid, whose decision, under oath, shall fix and determine the same, and _____ per cent. on the amount of the appraisement or valuation so fixed and determined shall be the annual rent of the said lot of land for such further term. And it is further mutually covenanted and agreed, by and between the parties aforesaid, that at the expiration of the term to be granted by such renewed release as aforesaid, the said parties of the first part, their successors or assigns, shall have the full liberty and choice either to grant a second renewal of this lease for the further term of _____ years thence ensuing, at such

annual rent, payable half-yearly (but not less than the rent of the preceding term), as shall be ascertained and determined in the manner aforesaid, or to pay unto the said party of the second part, his executors, administrators, or assigns, the value of the said house to be built and erected as aforesaid, which value shall be ascertained by three disinterested persons on oath, to be chosen as aforesaid. And it is further mutually covenanted and agreed, by and between the parties aforesaid, that in case the said parties of the first part, their successors or assigns, shall and do elect and choose to grant a second renewal of this lease as aforesaid, they, the said parties of the first part, their successors or assigns, shall still have and retain the full liberty and choice at the expiration of the term to be granted by such second renewal, either to grant a third renewal of this lease for the further term of twenty-one years thence ensuing, at such annual rent, payable half-yearly (but not less than the rent of the last preceding term), as shall be ascertained and determined in the manner aforesaid, or to pay unto the said party of the second part, his executors, administrators, or assigns, the value of the said house, which value shall be ascertained as aforesaid; and in this manner, at the expiration of the term to be granted by the first renewal of this lease, and at the expiration of each and every term which may be thereafter granted by each and every subsequent renewal of this lease, the said parties of the first part, their successors or assigns, shall still have and retain the full liberty and choice, either to grant a further renewal of this lease for the further term of twenty-one years, at such annual rent, payable half-yearly (but not less than the rent of the last preceding term), as shall be ascertained and determined in the manner aforesaid, or to pay unto the said party of the second part, his executors, administrators, or assigns, the value of the said house, which value shall be ascertained as aforesaid. And it is further mutually covenanted and agreed, by and between the parties aforesaid, that whenever the said parties of the first part, their successors or assigns, shall refuse to grant a renewal of this lease as aforesaid, the said house shall be valued and paid for as aforesaid: Provided, always, that the party of the second part, his executors, administrators, or assigns, shall not be compelled to surrender the premises until such payment be made or tendered. And it is further mutually covenanted and agreed, by and between the parties aforesaid, that in case the said parties of the first part, their successors or assigns, shall at the expiration of the term to be granted by the first renewal of this lease, or at the expiration of any term which may be granted thereafter, by any subsequent renewal thereof, elect and choose to pay unto the said party of the second part, his executors, administrators, or assigns, the value of the said house to be ascertained as aforesaid, and shall actually make such payment or tender the same, he, the said party of the second part, his executors, administrators, or assigns, shall then deliver up the said house in the same order and condition in which it was at the time of its valuation as aforesaid, and also all and singular other the premises hereby demised, into the hands and possession of the said parties of the first part, their successors or assigns, without fraud or delay. And lastly, it is mutually covenanted and agreed, by and between the parties aforesaid, that each renewed lease shall contain the like covenants, provisos, and conditions, as herein contained, except as regards the erection of any house or building on the said demised premises.

IN WITNESS WHEREOF, to one part of these presents, remaining with the parties of the first part, the party of the second part hath set his hand and seal; and to the other part thereof, remaining with the party of the second part, the parties of the first part have caused their seal to be affixed, on the day and year first above written.

By order of the trustees of _____, in the city of New York.
[SEAL.] (Signed.)

Clerk.

1224. The Same; Renewal Lease.

[As in Form 1217 to *, thence continuing as follows:]

WHEREAS, the said parties of the first part, by indenture dated the day of _____, did grant and demise unto _____, all that certain lot of land hereinafter described for the term of twenty-one years, from the day of _____ then next, subject to certain rents, covenants, and conditions therein reserved and expressed. And, among other things, it was thereby agreed, that in case of the erection on the said lot of land of a building of such description as is therein specified, the said parties of the first part should, at the expiration of the said term, grant a new lease of the said lot for the further term of twenty-one years, at an annual rent to be agreed upon or ascertained as is therein mentioned, and with such covenants, conditions, and provisos to be therein inserted as are hereinafter contained; and,

WHEREAS, a building has been erected on the said lot of land of the description mentioned in the said lease, according to the terms thereof, whereby the said party of the second part is entitled to a renewal of the said lease for such further term, at an annual rent hereinafter reserved, and now in the manner prescribed by the said lease, payable half-yearly, and subject to the covenants, conditions, and provisos hereinafter contained.

Now, THEREFORE, this agreement [*proceeding as in preceding form from **].

1225. Lease by a Municipal Corporation for Purposes of a Fair, Lessees Covenantee to Erect Building.

THIS INDENTURE, made this _____ day of _____, one thousand nine hundred and _____, between the mayor, aldermen, and commonalty of the city of New York,¹ parties of the first part, and Y. Z., of said city, party of the second part:

WHEREAS, a certain resolution was heretofore adopted by the common council of said city, and approved by the mayor of said city, on the day of _____, which said resolution is as follows: "*Resolved*, That the free use and sole occupation of the ground known as Reservoir Square, belonging to the corporation of the city of New York, and bounded [*etc.*], be, and the same is hereby granted to Y. Z. and his associates for the term of five years, if required and used by them for the purpose hereinafter mentioned for that period; if not for the period of time, they may use the same not beyond five years from the adoption of this resolution, said Y. Z. and his associates paying therefor the rent of one dollar per annum, whereon to erect a building of iron and glass for the purpose of an industrial exhibition of all nations, in pursuance of the prayer of the petitioner, annexed, provided that the price of admission to said building for individuals shall at no time exceed fifty cents.

¹ The official name is now The City of New York. Greater New York Charter, § 1.

Now, THIS INDENTURE WITNESSETH: That the said parties of the first part have letten, and by these presents do grant, demise, and to farm let unto the said party of the second part, the free use and sole occupation of that part of the ground known as Reservoir Square, which is particularly designated, being colored pink on a map hereto annexed, drawn by _____, city surveyor, dated [etc.], which said map is considered a part of this indenture, said portion of said ground measuring [etc.], for the purpose of erecting thereon a building of iron and glass, for the purpose of an industrial exhibition of all nations, pursuant to the prayer of said Y. Z. heretofore presented to the said common council, and on file in the office of the clerk of said common council, for the term of five years, if required and used by the said party of the second part for the purpose hereinbefore mentioned for that period; if not, for the period of time he may use the same for said purpose, not beyond five years from the said _____ day of _____, one thousand nine hundred and _____, at the yearly rent or sum of one dollar per annum, to be paid in equal quarter-yearly payments; and it is agreed, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said parties of the first part to re-enter the said premises, and to remove all persons therefrom. And the said party of the second part doth hereby covenant to pay to the said parties of the first part the said yearly rent as herein specified; and it is expressly understood and agreed, and this indenture is upon the express condition that the said party of the second part and his associates shall and will erect, upon the said premises, such a building as is described in the petition and resolution aforesaid, and that the price of admission to said building for individuals shall at no time exceed fifty cents, and that at the expiration of the said term, the said party of the second part shall quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted; and the said parties of the first part do covenant, that the said party of the second part, on paying the said yearly rent, and performing the covenants and agreements aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

IN WITNESS WHEREOF, the said parties of the first part have hereunto caused the common seal of the said city of _____ to be affixed, and the party of the second part has hereunto set his hand and seal, the day and year first above written. [Signatures.]

By the common council. [SEAL.]

[Signature of clerk.]

1226. Covenants in a Farm Lease on Shares.

And the said party of the second part hereby covenants and agrees, to and with the party of the first part, that he will occupy, till, and in all respects cultivate the premises above mentioned, during the term aforesaid, in a husbandlike manner, and according to the usual course of husbandry practiced in the neighborhood; that he will not commit any waste or damage, or suffer any to be done; that he will keep the fences and buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted; and that he will deliver to the said party of the first part, his heirs, executors, or administrators, or to his or their order, one equal

half of all the proceeds and crops produced on the said farm and premises aforesaid, of every name, kind, and description,—to be divided on the said premises, in the mow, stack, or half-bushel, according to the usual course and custom of making such divisions in the neighborhood, and within a reasonable time after such crops shall have been gathered and harvested.

It is further agreed between the parties hereto that the party of the first part shall provide one equal half of all seed or seeds necessary to be sown or planted on said premises, and pay all taxes and assessments upon the same; that the party of the second part is to do, or cause to be done, all necessary work and labor in and about the cultivation of the said premises; that he is to have full permission to inclose, pasture, or till and cultivate the said premises, so far as the same may be done without injury to the reversion, and to cut all necessary timber for firewood, farming purposes, and repairing fences; and that he is to give up and yield peaceable possession of the said premises at the expiration of his said term.

1227. Surrender of a Lease Indorsed Thereon.

KNOW ALL MEN BY THESE PRESENTS, that I, Y. Z., the within-named lessee [or, assignee of the within-named lessee], in consideration of dollars, to me in hand paid, do, for myself, my executors and administrators, bargain, sell, surrender, and yield up, from the day of the date hereof, unto the within-named Y. Z., lessor [or *other owner of the reversion*], and his heirs [or, his executors and administrators], the within indenture of lease, and the lands and premises therein mentioned, and the term of years therein yet to come, with all my right, title, and interest thereto, and that free and clear of all incumbrances of what kind soever, at any time, by me, or by my privity, consent, or procurement, done, committed, or suffered.

IN WITNESS [etc., as in Form 1204].

1228. Lease of Rooms in a College Fraternity House.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , WITNESSETH: That , a corporation organized and existing by and under the laws of the state of , doth hereby lease, demise, and let unto , subject to the rules and regulations of College, and of the Fraternity, for preserving order on the premises, the suite of rooms known as No. , on the floor in its building on and streets, in the city of

To HAVE AND TO HOLD the premises from 1st, , to last day in , , both inclusive; yielding and paying therefor the rent of dollars per year, so long as the lessee shall hold the premises; and the said lessee hereby promise to pay the said rent in seven equal installments, one each on the day of , of each year, during the continuance of this lease, or any renewal thereof.

And the said lessee also hereby agree that unless on or before the day of , he shall give to the lessor written notice of intention to vacate the leased premises at the expiration of the term above specified, then this lease shall, at the option and election of the lessor, be considered as renewed and extended for another year from and after the expiration of the term above specified; and the lessee hereby make the like covenants with respect to each year during which this lease shall continue in force.

The said lessee also agree to be responsible for, and make good, any damage done either by breaking of the window glass, or other injury to the said rooms, or other premises or property, during the time of occupancy as aforesaid.

The said lessor also agrees to make the necessary repairs to keep the said premises in tenantable repair, within a reasonable time after being notified by said lessees, or either of them, that such repairs are necessary.

The said lessor also agrees to properly care for said rooms during the continuance of this lease without expense to the lessee, and the chamber work of the rooms is to be performed under the direction and at the expense of the lessor.

The said lessor also agrees to properly heat and light said rooms during the continuance of this lease, as the same are now heated and lighted, without expense to the lessee, except that said lessee shall light said rooms at own expense, between the hours of midnight and seven A. M. [and shall heat and light said rooms at own expense, during the times set apart by said college for vacations]. Provided, nevertheless, that the said lessee shall furnish the necessary gas and electric light fixtures for said rooms, and keep the same in repair at own risk and expense.

And the lessee further agree to quit and deliver up the premises to the lessor, or its attorney, peaceably and quietly, at the expiration of the lease, in as good order and condition, reasonable use and wear thereof, fire, and other unavoidable casualties excepted, as the same now are, or may be put into by the said lessor, and to pay the rent as above stated, and for such further time as the lessee may hold the same, and not make or suffer any waste thereof; nor lease, nor underlet, nor permit any person or persons to occupy or improve the same, or make, or suffer to be made, any alteration therein, but with the approbation of the lessor thereto, in writing, having been first obtained; and that the lessor may enter to view and make improvements, and to expel the lessees, if either of them shall fail to make the payments as aforesaid, or make or suffer any strip or waste thereof, or violate any of the rules and regulations established as aforesaid.

All furniture and other property which may be on the premises, during the continuance of this lease, shall be at the sole risk of the lessee; and if the same be destroyed or damaged by fire or water, or by use or abuse of the electric wiring, or fixtures, or of the steam or water pipes and fixtures, or leaking or bursting of the pipes, or from any other cause, the lessor shall not be responsible or liable for such destruction or damage; unless such damage is caused by said house not being in tenantable repair through the negligence of the lessor to keep the same in tenantable repair, as hereinbefore provided. The lessee hereby agree to pay any and all damages caused by his neglect, or misuse, or abuse, of the water, steam, gas, or electric fixtures during the lease.

And this lease is upon this further condition, that in case of violation of any of the said rules and regulations, so prescribed as aforesaid, or in case the said lessees, or either of them, shall be expelled or dismissed from College, or in case the president of College shall request that the said lessees, or either of them, be not allowed to remain in the premises, or if said lessees, or either of them, shall at any time cease to be a member of said chapter, or be suspended from membership therein, or if said chapter or said lessor shall at any time be of the opinion that the presence of said

lessee [or either of them], in said premises is detrimental to said chapter or fraternity, or in case of violation of any or all of the conditions hereinbefore named, it shall and may be lawful for said lessor, or its attorney, without further notice, forthwith to enter and expel from the premises said lessee [or either of them], or any person or persons in possession, so violating any of said regulations or conditions. Provided, however, that this is in no event to impair or discharge the claim of the lessor, its successors and assigns, to the rent and other payments agreed to be paid as above specified; except that if said lessee [or either of them], shall cease to be a student in said college, and is or are expelled or dismissed from said college, or chapter, or fraternity, the said lessee may terminate this lease by giving at least one month's notice thereof to the lessor in writing.

IN WITNESS WHEREOF, the said lessor and lessee have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered
in presence of

Corporation,
By , Committee.

1229. Lease Containing Chattel Mortgage Covenants, to Secure the Rent.

[As in form No. 1204, to *, continuing as follows:]

THIS INDENTURE FURTHER WITNESSETH: That the said party of the second part, for and in consideration of the sum of [*insert the whole sum to be paid under the lease*] dollars, in hand paid, the receipt whereof is hereby acknowledged, does hereby grant, sell, convey, and confirm unto the said party of the first part, his heirs and assigns, all and singular the following described goods and chattels, to wit [*here insert a full schedule or list of the articles*].

TOGETHER with all and singular the appurtenances thereunto belonging, or in anywise appertaining. To HAVE AND TO HOLD the same unto the said party of the first part, his executors, administrators, and assigns, to his and their sole use forever; and the said party of the second part, for himself and for his executors, administrators, and assigns, does covenant and agree to and with the said party of the first part, and his executors, administrators, and assigns, that he is lawfully possessed of said goods and chattels as of his own property, that the same are free from all incumbrances, and that he will, and his executors and administrators shall warrant and defend the same unto the said party of the first part, and his executors, administrators, and assigns, against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, that if the said party of the second part, or his executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said party of the first part, or his heirs, executors, administrators, or assigns, the said sum of dollars, rent above reserved, punctually, and in the manner and at the times and place above mentioned, then and from thenceforth these presents, and everything herein contained, shall cease and be null and void.

AND PROVIDED ALSO, that it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to retain possession of the said granted goods and chattels, and at his or their own expense to keep and to use and enjoy the same, until the said party of the second part, or his executors, administrators, or assigns, shall make default in the payment of the said rent above specified, at the time or times, and in the manner hereinbefore provided, or unless the said party of the first part shall fear diminu-

tion, removal, or waste for want of proper care, or until the said party of the second part shall sell or assign, or attempt to sell or assign, said goods and chattels, or any part thereof, or if any writ issued from any court shall be levied on any part of the above-described goods and chattels; that then, and in any of the aforesaid cases, all of said sum of dollars, above reserved as rent for said demised premises, shall become due and payable, and the said party of the first part, his heirs, executors, administrators, and assigns, agents or attorneys, or any of them, may elect to take possession of the said property, and for that purpose may pursue the same, or any part thereof, wherever it may be found, and also may enter any of the premises of the said party of the second part, wherever the said goods and chattels may be, or be supposed to be, with or without force or process of law, and search for the same, and, if found, to take possession of and remove, and sell and dispose of said property, or so much thereof as may be necessary to pay the rent due, and the balance of rent for the whole unexpired term, whether due or not due, at public auction, to the highest bidder, after giving ten days' notice of the time, place, and terms of sale, together with a description of the property to be sold, either by publication in some newspaper in the city of , or by similar notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said party of the first part, or his heirs, administrators, or assigns, agents or attorneys, or any of them, may elect, and out of the money arising from such sale, to retain, first, all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling of such property, goods, chattels, and effects, and all prior liens, and second the rent due, and the balance of rent for the whole unexpired term, whether due or not due, rendering the overplus of the money arising from such sale, and the remainder of said goods and chattels, if any there shall be, unto said party of the second part, or his legal representatives.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, by and between the parties aforesaid, that if the rent above covenanted to be paid, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by said party of the second part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agents, attorneys, or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and that said party of the second part, or any other person or persons occupying, in, or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby agrees to waive all legal right which he may have to hold or retain any such property, under any exemption law now in force in this state, or in any other way. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, said party of the second part, or his exec-

utors, administrators, or assigns, hereby covenant and agree to surrender and deliver up said above-described premises and property, peaceably, to said party of the first part, or his heirs, executors, administrators, or assigns, immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same after such default, or after the termination of this lease in any of the ways above-named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

In presence of

1230. Lease of Railroad Rolling Stock.

THIS AGREEMENT, made the day of , in the year , between the Equipment Company, a corporation duly organized under the laws of the state of , and hereinafter called the lessor, party of the first part, and , hereinafter called the lessee, party of the second part, WITNESSETH: That the said parties, for and in consideration of the sum of one dollar, and of other good, valuable, and sufficient considerations to each by the other in hand paid, the receipt whereof is hereby acknowledged, and also in consideration of the mutual covenants herein contained, have covenanted and agreed, and do hereby covenant and agree with each other as follows:

First. The said lessor agrees to let and furnish for the use of the lessee the hereinafter mentioned railroad equipment and rolling stock, which is described, lettered, and numbered as follows, to wit: [*here describe marks*]: and to allow the lessee to retain and use the same for the purposes of its usual business for the period of time hereinafter specified, and free from interruption or interference except as hereinafter provided.

Second. The lessor agrees to deliver the said equipment and rolling stock leased under this contract on or before the following dates, and at the following points: [*state these fully*].

And the lessee agrees to receive the same there promptly on arrival; and in case of any delay, neglect, or refusal on the part of the lessee so to receive said equipment and rolling stock, all expenses and charges arising from such delay shall be payable by the said lessee, and, during such delay, the said equipment and rolling stock shall be deemed, for all the purposes of this contract, to be in the possession and at the risk of the lessee.

Third. The lessee agrees to pay rent for the use of the said equipment and rolling stock as follows:

\$ per month for the use of each locomotive;
 \$ per month for the use of each passenger car;
 \$;
 \$.

Fourth. The said rent upon each parcel of the said equipment and rolling stock leased under this contract shall commence from and including the day following its delivery by the lessor, at the points designated, and shall continue during the existence of this contract, and so long thereafter as the same shall be detained from the lessor. Such rentals shall be due monthly, and shall be payable by the lessee, at the office of the lessor in city, in

United States currency, or in sight drafts on _____, without deduction or delay, on the fifteenth day of each month, according to the rental account for the preceding month, as hereinafter provided: and for the purpose of estimating the rent upon any fractional part of a month, each month shall be considered as having thirty days, and the daily rental as being equal to one-thirtieth part of the rental for one month. It is expressly understood and agreed, that the said equipment and rolling stock has been furnished for the operation, construction, and improvement of the road of the lessee, and that the rental is part of the construction and working expenses of such lessee, and that such rentals shall have the same preference of payment and lien as is or may be given by law against said lessee to claims for material supplied or labor furnished for the construction, improvement, or operation of its road.

Fifth. Nothing herein contained shall affect the lessor's absolute ownership of and title to said equipment and rolling stock, such ownership and title being hereby expressly reserved to and retained by the lessor, and the lessee agrees not to sublet or sublease the said equipment and rolling stock, or any part thereof, nor to permit the same, or any part thereof, to pass out of its possession, or from under its control, nor to be taken from off its railroad, except in the ordinary and regular course of its legitimate transportation business over the lines of other companies. And the lessee agrees that it will not, in any manner, suffer or permit the said equipment and rolling stock, or any part thereof, to be pledged, seized, or held for any tax, debt, lien, or obligation whatsoever, nor to be in any manner incumbered by or in consequence of any such tax, debt, lien, or obligation; and that in case any state, county, or other tax shall be imposed or payable upon said equipment and rolling stock, or any part thereof, or upon the rental or earnings thereof, or any part thereof, during the continuance of this contract, or before the actual redelivery of the said equipment and rolling stock to the lessor, the lessee will promptly pay such tax, debt, or obligation, and relieve such rolling stock from the lien thereof, and in case of its failure so to do, the said lessor may pay such taxes, debts, or obligations, and all charges and expenses connected therewith or arising therefrom; and the amount so paid, with interest thereon from the time of such payment, shall forthwith be due and payable from the lessee to the lessor, and shall be collectible in the same manner as other moneys due hereunder.

Sixth. The lessee further agrees, that it will cause, at its own cost and expense, all the said equipment and rolling stock at all times to be maintained in good order and repair, making needed repairs promptly, so that there shall be no deterioration in value or condition of any such equipment and rolling stock other than that resulting from age, and that the said lessee will, at the expiration or other determination of this lease, or any extension thereof, deliver said equipment and rolling stock in such good order and repair to said lessor, or its order; and if said equipment and rolling stock are not in such good order and repair, said lessee shall pay said lessor on demand such sum or sums of money as shall be necessary to make the necessary and proper repairs. The delivery aforesaid shall be made at _____, and the lessor shall have the right, without expense to it, to keep and store the said equipment and rolling stock upon any of the railways or premises of the lessee until a reasonable time for their removal has elapsed thereafter.

Seventh. The said lessor shall have the right from time to time to cause the said equipment and rolling stock to be inspected by any person to be appointed by it, and such person shall be furnished with the necessary authority to travel without charge over the railroads wherever said equipment and rolling stock may be, for the purpose of making such inspection. And the said lessor shall have a right to demand from time to time from the lessee, and the lessee shall furnish a written statement of the condition, location, and use of said equipment and rolling stock.

Eighth. The lessee further agrees, that it will immediately, and at its own cost and expense, replace any of said equipment and rolling stock that may be destroyed from any cause whatsoever by and with other equipment and rolling stock, of equal size, capacity, value, material, character, and construction, and all questions arising under this article of this agreement shall be settled and adjusted by the master mechanics of the several parties hereto, or by an impartial umpire to be selected as provided in article tenth of this agreement.

Ninth. This agreement shall continue in force for the space of unless the same shall be sooner terminated by mutual consent, or by or in consequence of the violation by the lessee of some or any of the provisions herein contained; and in case of the violation of any of the provisions hereof to be performed by the lessee, or in case of its default in the payment of any part of the rental, or expenses of repairing, or any other sum or sums that may be due hereunder (whether the same shall have been demanded or not), or of any neglect or failure on the part of the lessee to maintain the equipment and rolling stock in the condition required hereby, or in case of any other default or failure on its part under this agreement, or in case any proceedings of any kind shall be commenced against the lessee for the appointment of a receiver, or for the foreclosure of any deeds of trust or mortgage, or in case of the institution of any proceedings, either at law or in equity, whereby the control or ownership of such equipment and rolling stock might be affected or disturbed, then and in either of such events it shall be lawful for the lessor, at its option, to forthwith demand, and, with such force as may be necessary, to enter upon the premises and railroad of the lessee, or of any other person or corporation where such equipment and rolling stock, or any part thereof, may be, and take immediate and maintain exclusive possession and control of all of said equipment and rolling stock, or any part thereof, and as attorneys in fact or agents of said lessee to take, hold, and have the said equipment and rolling stock, or any part thereof, with or without the order or decree of any court of equity, or any other court having jurisdiction in the premises, and, at the option of such lessor, to declare and cause this lease to be wholly or in part annulled and canceled.

Tenth. Upon the expiration or other determination of this lease or any extension thereof, the lessee agrees to surrender to the lessor, or its authorized agents, all of the property leased, as provided in the foregoing sixth article hereof, and said lessee further agrees to pay on demand all rent then due for the use of said equipment and rolling stock, and all charges thereon, and all other sums that may have been paid or incurred by the lessor on account of the failure of the lessee to carry out any of the provisions of this agreement. And it is hereby further mutually agreed that the general master mechanics of the parties hereto (or in case of their failure to agree, an impartial umpire

of their selection), shall be the sole and final authority to decide upon the condition of the said rolling stock; and in case of the failure of the lessee to deliver the rolling stock as aforesaid at the points agreed, the lessee hereby agrees to pay, on demand, all costs and expenses of bringing or removing said rolling stock to the point or points aforesaid, and all rental accruing during such removal, and furthermore agrees to pay all damages, charges, and expenses occasioned by its neglect or refusal to comply with any of the covenants herein contained to be by it kept and performed.

Eleventh. The lessee shall and will plainly and permanently mark or cause to be so marked on each side of each and every article of equipment or rolling stock received hereunder the words " Equipment Company, owner " and the proper number, and will not allow the name or designation of any other person or company as owner to be placed on any such equipment or rolling stock. In the event of any such marks being destroyed, the lessee will immediately restore the same, and will do such other acts as the lessor shall require for the full and complete protection of its rights hereunder. In case the lessor shall sell and assign any of such equipment and rolling stock, the name of such assignee as owner shall be placed on the said equipment and rolling stock if so required.

Twelfth. It is also agreed, in case of any default hereunder on the part of the lessee, that all the earnings of the said equipment and rolling stock shall then and thereafter be and become payable to the lessor, and be applied and received by it as if received under the provisions of the fourth article hereof, and the lessee agrees forthwith upon such default, and hereby authorizes and empowers the lessor to notify the Railroad Clearing House Association or the railroad companies that at the time may be owing for the service or use of such equipment and rolling stock to pay over such earnings to such lessor. Such notice, however, shall not be necessary in order to enable the lessor to collect and receive such earnings in case of default.

Thirteenth. And the said lessee hereby agrees, that in case of any default on its part as aforesaid, it will not set up, claim, or seek to take advantage of any valuation, stay of execution, appraisement, or extension laws which might prevent, postpone, hinder, or delay the right of the lessor to take possession of or operate or control the said equipment and rolling stock, or any part thereof, or the immediate enforcement of its rights hereunder, without and free from appraisement, valuation, stay, or other condition or hindrance, but the said lessee will and does hereby waive the benefit of any and all such valuation, stay, appraisement, or other laws to such effect as aforesaid.

Fourteenth. All the provisions of this agreement shall apply to and bind the personal representatives, successors, or assigns of the respective parties hereto. And the lessee doth hereby covenant that it will at all times hereafter, upon reasonable request, make, do, execute, and deliver all such further or other reasonable assurances, acts, and agreements as shall be necessary to protect the said equipment and rolling stock, or any part thereof, or the ownership or control thereof, for the benefit of the lessor; and that in case any of the said equipment and rolling stock shall in the course of traffic be transferred from said lessee to any other person or persons or corporations, such other persons or corporations, so long as such equipment and rolling stock shall remain in their possession, shall hold the same as bailees of the lessor and not of the lessee, and shall be answerable to the lessor for the

same, and the lessee, in any and all arrangements it shall make with such other persons or corporations, shall act only as the agent of the lessor, and not on its own behalf.

IN WITNESS WHEREOF, the said parties have caused their respective corporate seals to be hereto annexed, and the same to be attested by their respective officers or agents, the day and year above written.

Executed in interchangeable duplicate copies.

[SEAL.]

Equipment Company

by

[*Acknowledgment.*]

1231. Car Trust Agreement.

AGREEMENT, made this day of , , by and between the Equipment Company, a corporation duly created and existing under the laws of (hereinafter called the lessor), and (hereinafter called the lessee).

First. The lessor agrees to lease and conditionally sell to the lessee, and the lessee agrees to hire and conditionally buy from the lessor the following described rolling stock and equipment, viz.: [*here describe it*].

Second. Said lessor enters into this contract and parts with the possession of its property, to wit, said above-described rolling stock and equipment, upon the following terms and conditions, to all of which said lessee does hereby agree.

Third. Delivery of the said rolling stock and equipment to be as follows: [*here describe the places and terms of delivery, and also the times of delivery*].

Fourth. Such renting and hiring to be in respect to said above-described rolling stock and equipment for the period of from and after the day of , (which said date it is agreed shall be the average date of delivery), subject, however, to the provisions and conditions hereinafter named.

Fifth. It is agreed that the value of said rolling stock and equipment is as follows: [*here state particulars*].

Sixth. And the rental and conditional purchase money thereof, payable by said lessee to said lessor, shall be as follows: [*here state particulars*].

Seventh. Each of said deferred payments shall be represented by a lease warrant, duly executed by the lessee, of the following form and tenor:

§

On the day of , , without grace, promises to pay to own order dollars, with interest thereon at the rate of per cent. per annum, from the day of , , for rental of rolling stock and equipment, under contract of lease with the Equipment Company, of even date herewith, payable with exchange on at .

Eighth. And further, lessee agrees, at lessee's own cost and expense, to inspect and receipt for all said rolling stock and equipment at the place where it is located before shipment. Said inspection may be made and receipts given by a representative of lessee. If, however, lessee orders any of said rolling stock and equipment to be shipped without such inspection having been made, then lessee agrees that such action shall be construed as a waiver of inspection as to the same, and takes it at lessee's own risk, hereby expressly agreeing that the same complies with all contracts in reference thereto, and is to lessee's entire satisfaction.

Ninth. Said lessee hereby relieves the lessor from all liability and responsibility for delays in the completion for shipment, shipment, and arrival at destination of any portion of said rolling stock and equipment, but it is hereby agreed that the lessee is and shall be subrogated to all rights the lessor may have against others by reason of such delay.

Tenth. At all times, the name — plates, marks, and signs of the ownership of lessor shall be fixed and retained upon each piece of said rolling stock and equipment for the purpose of making lessor's ownership publicly known. In the event of any such marks or signs being destroyed, the lessee shall immediately restore same.

Eleventh. And further, lessee agrees to use said rolling stock and equipment, and each and every item thereof, for the purpose for which it was originally constructed, and as rolling stock and equipment, and for no other purpose whatsoever.

Twelfth. The said rolling stock and equipment shall be insured by the lessor against loss by fire, for the full term of this lease, if possible, and for the benefit of lessor, and the insurance premiums shall be payable by the lessee: and in case any of said rolling stock and equipment shall be destroyed by fire, the lessee shall immediately replace the same by and with other equipment and rolling stock, as near as possible of like kind, style, size, capacity, material, character, construction, and value, and in that case lessor will pay to lessee all amounts it has collected from any insurance company, or others, on account of such loss.

Thirteenth. And further, lessee agrees to cause, at lessee's own expense, all the said rolling stock and equipment to be at all times maintained in good order and repair, making needed repairs promptly, so that there shall be no deterioration in value or condition of any thereof, other than that resulting from age, and will also immediately, and at lessee's own cost and expense, replace any equipment and rolling stock that may be destroyed, from any cause whatsoever (except fire, provided for in clause twelfth), by and with other equipment and rolling stock, as nearly as possible of like kind, style, size, capacity, material, character, construction, and value. And such repairs shall be made, and destroyed equipment replaced to the satisfaction of lessor.

Fourteenth. Said lessee further agrees to promptly pay all taxes and assessments imposed on any portion of said rolling stock and equipment, and the earnings thereof.

Fifteenth. And the lessee agrees, that it will not, in any manner, suffer or permit the said rolling stock and equipment, or any part thereof, to be pledged, seized, or held for any tax, debt, lien, or obligation whatsoever, nor to be in any manner incumbered by, or in consequence of, any such tax, debt, lien, or obligation, but shall forthwith promptly pay and discharge all such, to the end that no cloud shall affect lessor's absolute title to, and ownership of, all said rolling stock and equipment, free from all incumbrances and liens of any and every kind.

Sixteenth. And the lessee further agrees, from time to time, when requested so to do by the lessor, to make such reports in writing concerning the said rolling stock and equipment as lessor desires.

Seventeenth. The lessee further agrees, that the lessor shall have the right, from time to time, during the continuance of this contract, to cause all the said equipment and rolling stock to be inspected by any person to be ap-

pointed by lessor, and the lessee shall provide suitable facilities, and furnish such person all necessary information for making a complete and thorough examination and inspection of all said rolling stock and equipment, and shall pay all the expenses of such inspection, including a reasonable sum for the services of such person so making inspection.

Eighteenth. And further, if, at any time, lessee neglects or refuses to promptly pay any sum or sums of money, payable upon any claim or claims either against the lessee, or any portion of said rolling stock and equipment, and which sum or sums of money it is herein stipulated that lessee shall pay, then and in that event lessor may pay the same, and all interest thereon, and all expenses connected therewith, and arising therefrom, and from services and expenses of lessor's counsel and agents in investigating into, ascertaining, compromising, settling, and paying said claim or claims. And lessee hereby agrees to forthwith pay to lessor all and every said sum and sums of money, with interest thereon until paid, and also, and including all sums of money (together with interest thereon until paid), paid by lessor for said services, and expenses of lessor's counsel and agents. And it is hereby agreed, that if lessee neglects and refuses to pay to lessor the same, or any of them, forthwith (whether demanded or not), then, and in that event, each and all said sum and sums of money so paid by lessor shall be construed to have the same force and effect as the lease warrants so mentioned in clause twentieth, and payment shall be enforced in the manner described in clause twenty-second herein.

Nineteenth. And further, lessee covenants and agrees to do and perform promptly each and all the agreements and undertakings it is lessee's duty to do and perform, as herein stated, and to pay promptly, as they severally become payable, each and every payment of money it is lessee's duty to pay, as herein stated, and, from time to time, to do and perform such other things as shall be deemed necessary and expedient by the counsel of lessor, for the full and complete protection of the rights of lessor, as owner of said rolling stock and equipment.

Twentieth. And it is further agreed, that in event of default on the part of lessee in the prompt payment of any of the lease warrants so mentioned and described in clauses sixth and seventh, on the day on which the same falls due, or the prompt payment of each and every other sum of money provided herein, to be by lessee paid (whether demanded or not), or the due and prompt performance by the lessee of each and all the conditions and stipulations provided herein, to be done and performed by lessee, the lessor shall have the right, at its option, to declare each and all of said lease warrants and all other sums of money payable hereunder to be forthwith due and payable, rebating interest on such as are not due, and shall have the right to immediately bring and maintain suit for all thereof, and shall also have the right, by its agents, employees, and attorneys, to take and maintain immediate and exclusive possession of and remove all said rolling stock and equipment, and any portion thereof, wherever it may be found.

Twenty-first. And further, it is agreed, that in event of the seizure by lessor of said rolling stock and equipment, or any portion thereof, either as provided in clause twentieth or clause twenty-seventh, that lessor shall have the right to store any portion of said rolling stock and equipment on any side tracks and in any yard of lessee's for a reasonable time free of expense.

Twenty-second. And further, it is agreed, that in event of the seizure by

lessor of said rolling stock and equipment, or any portion thereof, either as provided in clause twentieth or twenty-seventh, lessor shall have the right to sell the same, or any portion thereof, either with or without notice, at public or private sale, in one or more lots, at one or more places, and at different times, on either the same or different days, and if sold at public sale, the lessor shall have the right to bid upon, buy and take and own, in its own right, free of all claims and incumbrances whatsoever on the part of lessee and others, said rolling stock and equipment, and any portion thereof, and apply the proceeds, first, to the payment of all sums of money, and interest thereon, incurred in obtaining possession, removing, storing, advertising, and selling the same, including compensation to and expense of attorneys and agents and servants, employed in and about the same; also court costs, if any; second, to the payment of all claims, together with interest thereon, arising under clauses eighth, tenth, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and twenty-eighth, and next, to the payment, pro rata, of all outstanding lease warrants so mentioned and described in clauses sixth and seventh, whether the same shall have then fallen due or not, adding interest to the face of the lease warrants where interest runs with them, and rebating interest on such as are not due, at the rate of five per cent. per annum, wherever lease warrants are not due and do not bear interest. If the net proceeds applicable to the payment thereof, as above set out, are more than sufficient to pay all such outstanding lease warrants and interest, then the surplus shall be payable to lessee, but if there be any deficit, after applying to the payment of said outstanding lease warrants said net proceeds so applicable as aforesaid to the payment thereof, then the lessee shall immediately pay such deficit, whether all of the said lease warrants have matured or not. Provided, further, that in and about giving notice of the sale of said equipment or any portion thereof, and in making any sale of any thereof, lessor shall be held only to do the same in good faith.

Twenty-third. And further, it is agreed, that in case of any default hereunder, on the part of the lessee, that all the mileage and earnings of the said rolling stock and equipment shall then and thereafter be and become payable to lessor, and applied by it, first, to the payment of all expenses incurred in ascertaining and collecting the same; second, to the payment of all sums and interest thereon, payable by lessor under the provisions of clauses eighth, tenth, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and twenty-eighth; and third, towards the payment of said lease warrants, then due and payable and thereafter falling due. And further, it is hereby agreed, that forthwith, upon any such default, lessee shall notify all parties to pay over such earnings to lessor. Such notice shall not, however, be necessary to enable lessor to collect and receive such earnings in case of default. But lessor may take such steps as it thinks advisable to accomplish this result. And it is further agreed, that in case of default on the part of lessee in the prompt payment of any of the said lease warrants as and when they mature, that then and in that case, and as part of the working expenses of lessee, that lessee and all others holding under it (including receivers, assignees, executors, and administrators), shall pay to lessor for the use of said railroad rolling stock a rental, at the following rates:

\$ per month for ;
 \$ per month for ;

the same as and when received by lessor to be applied as above stated.

Twenty-fourth. And further, it is agreed, that in consideration of the due and prompt payment by lessee of all and every said lease warrants, and interest thereon, and each and every other sum of money, and interest thereon, which it is provided herein that lessee shall pay, and also due and prompt performance by lessee of each and every act it is herein provided lessee shall do and perform, then, and not till then, the said rolling stock and equipment so described herein shall become the absolute property of said lessee, and then, and not till then, this contract shall operate to transfer the title to and ownership of the same from lessor to lessee.

Twenty-fifth. It is mutually covenanted and agreed between the parties hereto, that although hereafter, by written agreement, the provisions as to the rental to be paid under this agreement may be changed and this agreement in other respects modified, yet that no such change or modification shall or can be made as shall in any respect or to any extent diminish the total sum due hereunder from the lessee, as rental or otherwise, and that no such modification or change shall or can be made as shall in any respect or to any extent change or affect the title to or the ownership of the rolling stock and equipment herein referred to, until the total sum due from the lessee hereunder, as rental or otherwise, as also the total sum due, as rental or otherwise, under any agreement changing or modifying this agreement, shall have been fully paid, by the lessee to the lessor.

Twenty-sixth. It is further mutually covenanted and agreed between the parties hereto, that in case hereafter this agreement, or any of said lease warrants, shall be transferred or assigned by the lessor, and thereafter, for any reason, the lessee shall be unable to pay, or neglect to pay, the whole or any part of any of the lease warrants hereinbefore referred to, and the lessor shall take up, acquire, or pay any of said lease warrants, or any part thereof, that then the lease warrants so taken up, acquired, or paid shall not be considered as having been paid by the said lessee, and the said lessor, who may have taken up, acquired, or paid the said lease warrants, or any part thereof, shall, as holders of the said lease warrants, have each and all of the rights hereunder, and in and to the security of this agreement of lease, pro rata with the total amount due hereunder, that the holders thereof would have had from whom the said warrants may have been taken up or acquired, or to whom the said lessor may have paid or transferred the same.

Twenty-seventh. Nothing herein contained shall affect the lessor's absolute ownership of and title to said rolling stock and equipment, such ownership and title being hereby expressly reserved to and retained by lessor, until divested as provided in clause twenty-fourth herein. And the lessee agrees not to sublet or sublease the said rolling stock and equipment, or any part thereof, nor to permit the same, or any part thereof, to pass out of the lessor's possession or from under lessee's control, nor to be taken off lessee's railroad, except in the regular and ordinary course of lessee's legitimate transportation business over the lines of other railroads, without the express consent of lessor, and such consent shall not be operative until indorsed in writing hereon and signed by the lessor. And further, in case any legal proceedings are had in any suit at law or in equity against lessee wherein a receiver is appointed, or in case of the death, bankruptcy, or insolvency of lessee, or the issuing out of any court of law or equity of any execution or writ of any kind whatsoever, whereby lessee's right of possession or use of any portion of said rolling stock and equipment, or lessor's ownership of, title

to, or control over any portion of said rolling stock and equipment, is or might be affected and disturbed, then and in any or either of such events lessor, at its option, shall have the right to forthwith demand, and with such force as may be necessary to enter upon the premises of lessee, and of any and all other persons, firms, or corporations where such rolling stock and equipment, and any portion thereof, may be, and take and maintain immediate and exclusive possession and control thereof, and as attorneys in fact and agents of said lessee to take, hold, and have said rolling stock and equipment, and any portion thereof, with or without the decree or order of any court having jurisdiction in the premises, and at the option of lessor to cause this lease to be in whole or in part canceled and annulled, it being one of the express conditions inducing lessor to enter into this contract of lease, and part with the possession of said rolling stock and equipment, that no person, firm, or corporation, constable, sheriff, receiver, assignee, administrator, executor, officer, or caretaker of any court shall acquire any right, title, or interest in any portion of said rolling stock and equipment without the express consent of lessor, and no such consent shall be operative until indorsed hereon in writing and signed by lessor. And the happening of any of the events aforesaid, or the making of any contract by lessee, whereby the possession or use of said rolling stock and equipment by lessee solely is affected, hindered, or prevented, or the prompt performance by lessee of each and all the stipulations and conditions herein contained to be by lessee done and performed, is or may be hindered or prevented, or the rights and interests of lessor as herein set out in anywise affected or disturbed, shall operate as a cancellation of this lease, and lessor shall thereupon be restored to all its rights and the possession of all and every portion of said rolling stock and equipment, and thereupon such proceedings shall be had as are provided in clauses twentieth, twenty-first, and twenty-second herein. And, provided, further, that in the event of any person, firm, or corporation, or any constable, sheriff, receiver, assignee, administrator, executor, officer, or caretaker of any court, acquiring any rights hereunder to said rolling stock and equipment, and any portion thereof (and which can only occur, as hereinbefore stated, by the express consent of lessor), then and in that event it is fully understood and agreed, by any and all said parties, that they and each of them accept and are bound by all the provisions, conditions, and stipulations of this lease, the same as said lessee is bound hereunder.

Twenty-eighth. And further, it is agreed, that lessee will reimburse the lessor for all expenses incurred by it attending the preparation of this contract, and the execution, acknowledgment, filing, and recording of this contract.

Twenty-ninth. All the provisions, conditions, and stipulations of this contract of lease shall bind, apply to, and inure to the benefit of the successors, executors, administrators, personal representatives, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed in the day and year first above written.

[SEAL.]

Equipment Company,

By

President.

Secretary.

[Acknowledgment.]

1232. Railroad Lease.

THIS INDENTURE, dated this day of , A. D. , by and between the O. Railway Company, hereinafter called the O. Company, party of the first part; the S. Railway Company, hereinafter called the S. Company, party of the second part; and the U. Railway Company, hereinafter called the U. Company, party of the third part.

WHEREAS, the O. Company is a corporation organized and existing under the general laws of the state of , and is empowered among other things to construct, maintain, and operate railroad and telegraph lines in the state of , and in the territories of and ; and to build, purchase, own, and run steamships between any ports on the ocean, and steamboats on the , , and rivers; and also to consolidate with any railroad or railroads in said , on such terms as may be agreed upon; and also to facilitate and assist the construction, equipment, and operation of any railroad line in said , connecting or intending to connect or exchange traffic with the railroads, steamships, or steamboats of the O. Company, and for such purpose to subscribe for or purchase the stock or bonds of any company owning or operating such railroads, to guarantee or otherwise secure the payment of any such bonds, or the interest thereon, by pledge or mortgage of the property of the O. Company, and to consolidate with, lease, or contract for the operation and maintenance of said railroads; and,

WHEREAS, the O. Company is also possessed of the other corporate powers, franchises, and privileges, as set forth in its original and supplemental articles of incorporation; which original and supplemental articles of incorporation are hereby referred to, and are intended to be read and taken as a part hereof, and as if herein written out at length; and the O. Company is also authorized to lease any or all of its said railroads, steamships, and steamboats, franchises, and other property, on such terms as may be agreed upon, and as herein provided; and,

WHEREAS, the O. Company now owns and operates certain railroads between the following points, to wit: [*here describe them fully and in detail*]; and,

WHEREAS, the O. Company also operates certain railroads which are owned by the C. Railroad Company, running between the following points, to wit: [*here describe them particularly*]; and,

WHEREAS, the O. Company is the owner of substantially all the stock and of all bonds of the D. Railroad Company; and,

WHEREAS, the O. Company also owns certain railroad grades or embankments, as follows: [*here describe them*]; which lines the said O. Company intends to complete and operate as part of its railroad system; and,

WHEREAS, the O. Company also owns and operates certain steamships running between and , and between and ; and also steamboats plying on the , , and rivers; and,

WHEREAS, the O. Company has heretofore entered into certain agreements with the Terminal Company of , and has also executed certain traffic contracts with the N. Railroad Company, dated on , , and , , and also a certain contract with the Telegraph Company, dated on the day of , , and with the Palace Car Company, dated on the day of , ; and,

WHEREAS, the O. Company has heretofore executed its certain first

mortgage, dated on the day of , , and two supplementary mortgages, dated on the day of , , in favor of the Trust Company of New York, to secure the payment of bonds issued by the O. Company, to the amount of million dollars, of which bonds to the amount of million dollars are now outstanding and unpaid; and,

WHEREAS, the said O. Company has also heretofore executed and issued certain debenture bonds to the amount of million dollars, said bonds being dated on the day of , , being payable to bearer at the O. Company's office, in Boston, on the day of , , and bearing interest at the rate of seven per cent. per annum, payable semi-annually; and the said debentures provide that whenever the O. Company shall make any further mortgage, it shall provide that out of the bonds issued thereunder an amount, the principal of which shall be equal in face value to the principal of said debentures then outstanding, shall be deposited with a trust company in New York, to be held in trust for the purpose of securing the payment of said debentures, and of applying the proceeds of said bonds to the redemption thereof, and there are now outstanding and unpaid said debenture bonds of the par value of million dollars; and,

WHEREAS, the O. Company has heretofore executed its certain consolidated mortgage, dated on the day of , , in favor of the Trust Company, of New York, which provides that the bonds secured thereby shall be dated on the day of , , and be payable forty years thereafter, bearing interest at the rate of five per cent. per annum, and shall be limited to the rate of dollars per mile of constructed railroads, as therein set forth; and the O. Company has become entitled to issue bonds under the said consolidated mortgage to the amount of million dollars, of which there have been heretofore issued bonds of the par value of million dollars, leaving a residue of million dollars, for which amount the O. Company is now entitled to issue bonds in accordance with the terms of the said consolidated mortgage; and,

WHEREAS, the S. Railway Company is a corporation existing under an act of the congress of the United States, entitled "an act, etc., ," approved , , and is empowered to construct, operate, and own a railroad or railroads, from a point at or near , on the U. Railway, in the territory of , to the western boundary line of the territory of , etc., having express power and authority also to make running arrangements with any railroad or transportation company, or to lease, purchase, or otherwise acquire the charter, road, property, capital stock, or franchise of any such company; and the said S. Company has constructed its railroad from the said through the territories of and , to a point of connection with the railroad of the said O. Company at , in the state of ; and,

WHEREAS, the U. Railway Company is a corporation created by and existing under an act of the congress of the United States, entitled "an act, etc.," approved , , and other acts of congress amendatory thereof, and the said U. Railway Company now owns or controls and operates railroads extending from points on the river, in and , to , in the state of , and the said S. Company's railroad is operated as a continuous line with the U. Railway, and is a part of the U. Railway system, connecting the same with the railroads of the said O. Company; and the said U. Com-

pany now owns and holds more than one-half of all the capital stock of the said S. Company; and,

WHEREAS, the S. Company and the U. Company largely depend upon the railroads of the O. Company for an interchange of traffic; and since all the said railroad properties and the country tributary thereto would be benefited by the union of all the said railroads into a single and harmonious system; and in order to develop the resources of the said region, to protect the property of the said O. Company from injury arising from the construction of parallel roads, to provide the said U. Company with a through line, and to secure for its system traffic which might otherwise be diverted to other railroads, the said parties hereto desire to consolidate and unite their respective railroad systems under one management as herein provided, and to operate all the said railroads as continuous lines, and also to construct, maintain, and operate certain branch railroads which shall connect with the O. system, or with the lines of both the O. and the S. Companies, and form parts of the consolidated system:

NOW, THIS INDENTURE WITNESSETH: First. That the said O. Railway Company, in consideration of the premises, and of the rents and covenants hereinafter reserved and contained, on the part of the said parties of the second and third parts to be paid and performed, does by these presents, grant, demise, let, and lease, unto the said S. Railway Company, its successors and assigns, all and singular the railroads and telegraph lines, constructed, or to be constructed, which are now owned by the said O. Company, or which may be hereafter owned or acquired by the said company, by whatsoever title the same may be owned or held, and also all the lands, tenements, hereditaments, ways, and rights of ways, now owned or held, or which may be hereafter owned, held, or possessed by the said O. Company, for said railroads and telegraph lines, and for any and all purposes in connection with the construction, working, maintenance, and operation of the same, or any or all of them, and all the easements and appurtenances thereunto belonging or in anywise appertaining, and also all branches, extensions, sidings, tracks, bridges, depots, fences, stations, section-houses, tanks, warehouses, freight-houses, engine-houses, car and machine shops, and all other buildings, fixtures, and improvements of whatever kind and description, and wherever situated, now owned or held by the said O. Company, or which may hereafter be owned or held by said O. Company, for the use of said railroads, or in connection with the working, maintenance, and operation of the same; also, all locomotives, tenders, stationary engines, cars, trucks, push-cars, hand-cars, and all other rolling stock and equipments, and all the tools and implements, machinery, fuel, materials, and supplies, now owned, held, or possessed by the said O. Company for use in connection with the said railroad and telegraph lines, or any of them, or in connection with the working, maintenance, and operation of the same; and also the said railroad grades or embankments extending [*here describe them*].

And, also, all the steamships, steamboats, ferry-boats, tugs, barges, and other vessels, together with the tackle, furniture, boats, anchors, cables, and stores, thereunto belonging, or in anywise appertaining, or intended for use in connection therewith, now owned, held, or possessed by the said O. Company, or which may be hereafter owned, held, or possessed by the said company, and also all wharves, docks, slips, inclines, warehouses, and other struc-

tures and fixtures, and all goods and chattels now owned or held by the said O. Company for use in connection therewith;

And, also, all rights, powers, privileges, and franchises now owned or possessed by the said O. Company in connection with the said railroads, telegraph lines, and vessels;

And, also, certain real estate and other property of the O. Company not embraced within its mortgages, a schedule whereof is attached to this lease, and thus made part hereof, which premises are to be appraised as of their true value on the 1st day of _____, 18____, under the direction of the presidents of the O. and S. Companies, and the amount equal to their value as ascertained by such appraisal, in five per cent. consolidated bonds of the O. Company, is to be delivered to the O. Company, for sale or disposal by said company, and appropriation of the proceeds thereof to its own use;

Together with the rents, issues, and profits of all the said property hereby demised, and each and every part thereof:

To HAVE AND TO HOLD the said railroads, telegraph lines, steamships, steamboats, premises, property, and appurtenances, together with the rents, issues, and profits thereof unto the said S. Company, its successors and assigns, for its and their own proper use and benefit, from the 1st day of _____, in the year _____, for the term of ninety-nine years, then next ensuing; and the said S. Company, during the said term, shall have the sole and exclusive right, power, and authority to hold, occupy, use, enjoy, control, manage, and operate the same, and to regulate, fix, vary, demand, collect, receive, and dispose of all and every the rates, tolls, revenues, and charges to accrue thereon or therefrom; subject, however, to the lien of the mortgages hereinbefore referred to; and subject, also, to all the valid covenants and agreements contained in the contracts with the _____ Terminal Company, the _____ Telegraph Company, the _____ Palace Car Company, and the N. Railroad Company, hereinbefore referred to, it being intended hereby to place and put the said S. Company in the lieu and stead of the said O. Company, and with all the rights of said O. Company; the said S. Company, its successors or assigns, yielding and paying therefor to the said O. Company, its successors and assigns, at the times and in the manner hereinafter provided, the yearly rents, hereinafter specified, and keeping and performing all and singular the covenants hereinafter set forth to be kept and performed by the said S. Company.

Second. And, in further consideration of the said rents and covenants on the part of the said parties of the second and third parts to be paid and performed, the O. Company hereby covenants and agrees forthwith to transfer and assign to the S. Company, its successors and assigns, all the right, title, and interest which the O. Company may now have, hold, or possess, or which that company may hereafter have, hold, or possess, in and to the lease or leases of the railroads, shares of the capital stock and bonds, rolling stock, equipments, property, and appurtenances now owned, held, or possessed, or which may hereafter be owned, held, or possessed by the said C. Railroad Company, and by the said D. Railroad Company, or by any or either of them; and the O. Company hereby covenants and agrees that the S. Company, during the said term, shall have the sole and exclusive right, power, and authority to hold, occupy, use, enjoy, control, manage, and operate each and all of the said railroads, under such leases aforesaid, for the term of ninety-nine years, from the 1st day of _____, _____, and to regulate, fix, vary,

demand, collect, receive, and dispose of all and every the rates, tolls, revenues, and charges to accrue thereon or therefrom, yielding and paying therefor no rental whatever, except as provided herein, and subject to no other or further conditions or covenants than are contained herein.

Third. And, in further consideration of the said rents and covenants, the O. Company hereby covenants and agrees, on demand of the said parties of the second and third parts, or either of them, to procure the C. Railroad Company, a corporation existing under the laws of the territory of _____; to make, execute, and deliver to the S. Company, a lease of all the property and franchises now owned or held, or which may be hereafter owned or held by the said C. Railroad Company, said lease to be similar in all respects to the leases mentioned in the foregoing paragraph, and to continue for the term of ninety-nine years, beginning on the 1st day of _____, _____; and the S. Company shall pay no rent whatever under the said lease, and the same shall be subject to no conditions or covenants except as provided in this agreement.

Fourth. And the O. Company further covenants and agrees forthwith to transfer and assign to the S. Company all its right, title, and interest in and to the use, benefit, and enjoyment of the properties, rights, and privileges of the _____ Terminal Company, arising out of the contracts and relations of the O. Company therewith, and also all its right, title, and interest in and to those certain contracts entered into with the _____ Telegraph Company, dated on the _____ day of _____, 188 _____; and with the _____ Palace Car Company, dated on the _____ day of _____, 188 _____; and with the N. Railroad Company, dated on the _____ day of _____, 188 _____, and the _____ day of _____, 188 _____.

And the S. Company covenants and agrees to keep and perform the valid covenants and conditions on the part of the O. Company to be kept and performed, contained in or arising out of said contracts, as fully as the O. Company is bound to keep and perform the same.

Fifth. And the O. Company further covenants and agrees that it or its successors shall and will, during the said term of ninety-nine years, preserve, or renew and maintain its corporate existence and organization, and at all times during the said period, on demand of the said parties of the second and third parts, or either of them, shall and will exercise and put in force each and every corporate power and franchise, and do each and every corporate act necessary or desirable to carry out the provisions of this agreement, and to enable the said parties of the second and third parts, or either of them, to avail themselves of and use, exercise, and enjoy the rights, powers, and privileges hereby granted in respect to the said railroads, steamships, steamboats, and other property aforesaid, and shall and will, at any and all times, on demand, execute, acknowledge, and deliver to the said parties of the second and third parts, or either of them, such other and further instrument or instruments in writing, and under its corporate seal, as may be necessary or desirable, better and more effectively to secure the purposes of this indenture.

Sixth. And the O. Company further covenants and agrees to and with the said parties of the second and third parts, that it has no indebtedness or liability, actual or contingent, due or becoming due, except as herein stated, and that its said property is free from all claims and liens, except as herein set forth, and the O. Company further covenants and agrees that it will not hereafter, during the said period of ninety-nine years, incur any debt or lia-

bility, or make or issue any bond or bonds, or obligations, or any deeds of trust, mortgages, or other security whatever, except at the request of the said parties of the second and third parts, or either of them, and except such as are hereinafter provided for, and will protect, indemnify, and keep harmless the said parties of the second and third parts, and each of them, from any and all liability, damage, or expense on account of any indebtedness, liabilities, or obligations heretofore contracted or incurred by the O. Company, except as hereinafter specified, and the said parties of the second and third parts may and shall deduct and retain from any amounts becoming due and payable to the O. Company, under the terms hereof, such sums of money as they, or either of them, may be obliged to pay for the protection of their rights under this indenture, by reason of the default of the O. Company in keeping or performing the covenants or agreements herein contained.

Seventh. And the O. Company further agrees that it will, on demand of the said parties of the second and third parts, or either of them, forthwith execute and deliver to the said Trust Company, all the residue of the said five per cent. consolidated bonds, which it is now entitled to issue as aforesaid, or which it may hereafter become entitled to issue, whenever it shall become entitled to do so, and on demand of the said parties of the second and third parts, or either of them, shall and will procure said trust company to issue and deliver all the residue of the said bonds, duly and properly indorsed by the said Trust Company, as follows:

1. The said bonds to the amount of million dollars, or such amount thereof as shall be necessary to take up and cancel all of the said outstanding debenture bonds, in accordance with the terms of the said consolidated mortgage, dated , , and to pay such premiums or bonus as may be necessary to effect the cancellation of such bonds.

2. Such amount of said bonds as may be equal at par to the appraised value of the property of the O. Company not embraced within its mortgages, to be delivered to the O. Company, as provided on page hereof.

3. All the remainder of the said bonds to the S. Company, and from time to time, on demand of the S. Company, whenever the O. Company is entitled to issue the same.

Eighth. And it is hereby mutually agreed by and between the parties hereto, that the proceeds of all the said five per cent. consolidated bonds, which may be issued from time to time to the S. Company, as aforesaid, shall be used by the S. Company for the following purposes only, that is to say:

1. To pay for the construction and equipment of the branch railroads of the said O. Company referred to in the said consolidated mortgage, and the original and supplementary articles of incorporation of the O. Company, to an amount not exceeding dollars per mile of completed road.

2. To provide funds for the construction and equipment of railroad lines, at their actual cash cost, in the states of and , and the territories of and connecting or intending to connect or exchange traffic with the railroads, steamships, or steamboats of the O. Company, and to purchase the stocks and bonds, or either of them, of any company owning and operating such railroads already constructed, or hereafter to be constructed; provided, however, that no road shall be constructed out of the proceeds of such bonds, and no stock or bonds of other companies shall be purchased as aforesaid, except upon the express approval of the routes of such railroads by the board

of directors of the O. Company, and provided that such stocks and bonds, so purchased, shall be taken in the name of the said O. Company, and shall be deposited with the said Trust Company, to secure the payment of the said five per cent. consolidated bonds; but the interest to become due and payable by the terms of the bonds so purchased, and the dividends on such stocks shall be payable to or collectible by the S. Company so long as it is not in default hereunder; such lines, when acquired either by construction or purchase of the stock and bonds of other companies, shall become and be considered a part of the system of railroad of the O. Company, subject to all the terms and provisions of the lease, and shall be, as soon as practicable, consolidated with the O. Company.

3. To provide funds to an amount not exceeding the actual cash cost for the construction of a railroad bridge across the river, at , and for this purpose, with the approval of the board of directors of the O. Company, to purchase the stock and bonds, or either, of any company authorized to construct such bridge, and the stock and bonds so purchased shall be taken in the name of the O. Company, and deposited with the Trust Company, to secure the payment of the said five per cent. consolidated bonds; but the interest to become due or payable by the terms of such bonds and the dividends on such stocks shall be payable to or collectible by the S. Company so long as it is not in default hereunder.

Ninth. The O. Company further agrees that it will not sell or dispose of any of the said five per cent. consolidated bonds, except at rates and on terms approved in writing by the S. Company, except in case of disagreement between the parties, in which case it shall be settled by arbitration as herein provided, and will co-operate with the S. Company in effecting satisfactory sales of a sufficient number of said consolidated bonds to retire all the said mortgage and debenture bonds now outstanding.

Tenth. And the O. Company further agrees that on the request of the said parties of the second and third parts, or either of them, it shall and will, from time to time, during the existence of this lease, make, issue, and deliver such other bonds, bearing such rate of interest, and payable at such times and secured in such manner as the parties hereto shall agree upon, and will make, execute, and deliver such mortgages as may be deemed necessary to secure the payment of such bonds for the purpose of taking up, retiring, paying, or redeeming the entire issue of the said five per cent. consolidated bonds, when the same shall become due or payable, and any other bonds issued in lieu thereof under the terms of this tenth article, to the end that the principal of the bonded indebtedness of the O. Company shall be and continue at the total amount of the issue of said consolidated bonds, during the whole of said period of ninety-nine years, or the existence of this lease.

The S. Company hereby agrees, that with the bonds hereinbefore provided for in this clause of this agreement, or with the proceeds of the same upon sale thereof, it will provide for the renewal, extension, or payment of all the said bonds of the O. Company which may become due and payable within and during the existence of this lease, so as to save the O. Company from any default upon its bonded indebtedness during the existence of this lease.

But it is further agreed that the S. Company may, in case an extension thereof can thereby be procured, postpone the payment of any of said issues of bonds, by the execution and delivery to the holders of said bonds, of ex-

tension coupons for extended periods, preserving the lien of the said original mortgages, as may be agreed upon by the S. Company and the holders of said mortgage bonds, and the O. Company agrees upon demand to execute such coupons.

Eleventh. And the O. Company further covenants and agrees that at the request of the S. Company, it will, with the express consent and approval of the board of directors of the O. Company first had and obtained, locate, construct, equip at their actual cash cost, and maintain and operate, subject to the lien of the said mortgages, and subject to and in accordance with the terms, covenants, and conditions herein contained, any and all branch railroads specified or contemplated in the said original or supplementary articles of incorporation of the O. Company, or which may be duly provided for in any articles of incorporation which the O. Company may hereafter lawfully adopt; and the said branch lines when constructed shall become and be considered a part of the system of railroads of the O. Company, subject to this lease, and all the terms and conditions herein contained, and shall be, as soon as practicable, consolidated with the O. Company.

Twelfth. The O. Company further agrees that it will, within sixty days from the date of execution hereof, prepare schedules, in duplicate, duly authenticated, and deliver the same to the S. Company, which shall show in detail all of its properties, namely:

1. Schedule of the said railroads and branches, and telegraph lines, showing their condition, if finished, and to what extent completed, if unfinished.

2. Schedule of the ways, rights of way, yards, and other real estate, stations, buildings, depots, engine-houses, machine shops, bridges, and other structures used in the operation of the said railroads.

3. Schedule of rolling stock, tools, machinery, and fixtures, telegraph material, and appliances.

4. Schedule of steamships, steamboats, and other vessels.

5. Schedule of wharves, docks, piers, and warehouses used in connection with said steamships and steamboats.

6. Schedule of material and supplies on hand.

7. Schedule of all other property, whether hereby leased and transferred, or intended to be hereby leased and transferred, or whether retained and held by the O. Company.

Thirteenth. In consideration of the premises, the said S. Company hereby covenants and agrees to make to the O. Company the following payments during the existence of this lease, to wit:

I. The amount of dollars per annum to the said O. Company, at its office in the city of New York, in equal quarterly payments, beginning on the day of ,

II. The amount of interest which shall accrue from time to time from and after the date hereof, on the said first mortgage bonds, which may from time to time be outstanding and uncalled, in accordance with the terms of the said first mortgage, dated , , and the supplemental mortgages, dated on the day of , , such payments to be made from time to time, ten days before said interest or any portion thereof shall be payable.

III. The amounts which shall be required for a sinking fund, as provided in said first mortgage, dated on , , and the supplementary mortgages, dated on , , and the payments of such sinking fund, which

shall be calculated from and after the date hereof, shall be made ten days before the date on which the said payments are respectively required under the terms of said mortgages.

IV. The amount of interest calculated from and after the date hereof which shall from time to time become due and payable on the said debenture bonds, now outstanding in accordance with the terms thereof.

V. The amount of interest, calculated from the date hereof, which shall from time to time become due and payable on the said five per cent. consolidated bonds, which are now outstanding, or shall hereafter be issued in accordance with the terms hereof, and which shall from time to time be outstanding and uncanceled, such payments to be made ten days before said interest, or any portion thereof, shall be payable; but no interest shall be paid on the said bonds amounting to _____, now held by the said _____ Trust Company to secure the payment of the said first mortgage bonds, so long as the said first mortgage bonds are outstanding and unpaid.

VI. Such sum as may be necessary, not to exceed _____ dollars each year, to the O. Company, at its office, to defray the cost of maintaining its organization, such amount to be payable monthly in advance.

VII. Such amounts, calculated from the date hereof, as may hereafter from time to time become due and payable by the O. Company by reason of its aforesaid obligations to the said _____ Terminal Company, (the first payment thereunder to be made on the _____ day of _____, _____); and by reason of the said contracts with the _____ Telegraph Company, and the _____ Palace Car Company, and the N. Railroad Company; but the said S. Company shall not be liable for any amounts now due and payable, or hereafter to become due and payable, by reason of or in connection with any obligations heretofore incurred by said O. Company to the N. Railway Company, or by reason of the suits heretofore instituted by _____ and others, but the O. Company agrees to pay all such charges.

VIII. The amount of interest which shall from time to time become due and payable on any bonds which the said O. Company shall during the term of this lease, by agreement of the parties hereto, as herein provided for, execute and issue, for the purpose of taking up, paying, or retiring the said five per cent. consolidated bonds, or for the purpose of taking up, retiring, or cancelling any subsequent issue of bonds, which may be made in accordance herewith.

Fourteenth. And the S. Company hereby covenants and agrees to and with the said O. Company and said U. Company, that it will operate the said railways and steam vessels, and manage the aforesaid properties in harmony with the railroads of said U. Company, and as a part of the U. system, and in the same manner as the O. Company, or other owner thereof, is now or may at any time during the existence of this lease be required by law to do, and will at all times during the existence of this lease keep and preserve the said railways and the rolling stock, equipment, and appurtenances thereunto belonging, and the said steam vessels and their appurtenances in good repair, ordinary wear and tear, and destruction by the elements excepted, and except as to such parts thereof as may be sold or otherwise disposed of, or the use thereof abandoned, as herein provided, and will supply from time to time such additional rolling stock, and equipment for the said railroads, and such replacements and renewals, improvements, and betterments, as may be neces-

sary, and will at all times insure all the boats and vessels of the O. Company at fair and reasonable valuations, or keep the same insured, and the O. Company shall at all times during the continuance of this lease have the right to examine and inspect the property hereby demised, and the property shall at all times be open to the inspection of the president of the O. Company, and such person or persons as he may appoint.

Fifteenth. And it is hereby mutually covenanted and agreed that the said S. Company shall possess and exercise, with the express approval of the board of directors of the O. Company, first had and obtained, all the rights, powers, and privileges now possessed or exercised by the O. Company, in respect to selling, leasing, and otherwise disposing of worn-out, unserviceable, or unnecessary rolling stock and equipment, steamships, steamboats, and other properties hereby demised, so far as such powers may be exercised in conformity with the provisions of the mortgages hereinbefore referred to, and the O. Company hereby covenants and agrees that it shall and will, at the request of the S. Company, from time to time, during the period of this lease, take such action as may be necessary or desirable to secure the consent and approval of the trustees under the said mortgages, for the purpose of selling or otherwise disposing of such properties as aforesaid.

Sixteenth. And the S. Company further covenants and agrees that it will pay and discharge all expenses, costs, damages, claims, and demands whatsoever, which, without default of the O. Company, shall or may arise out of the management and operation of the said railroads and other properties, or any part thereof, during the existence of this lease, and will, and shall, at all times during such period, save and keep harmless, and indemnify said O. Company therefrom, and will defend all such actions and suits which shall or may be brought against the O. Company during said period, and will pay all taxes and assessments which may be lawfully levied or assessed for the year 188 , and all subsequent years during said period, upon the said railroads or other property hereby demised, and upon the business or income of the same, and upon the O. Company in respect thereof.

Seventeenth. And the S. Company further agrees that it will at all times, during the continuance of this agreement, keep accurate and detailed accounts of all moneys received and business done upon the said railroads and steam vessels, and in connection with the other properties hereby demised, and of all moneys paid out and liabilities incurred in connection with the said business, and such accounts shall, at all reasonable times during the existence of this lease, be open to the president or board of directors of the O. Company, and such persons as he or they may from time to time appoint to examine the same, and the S. Company shall and will furnish the O. Company with the usual monthly and annual statements of account, and with all reports and statements which the O. Company is now, or may hereafter be obliged to make or file under the requirements of any lawful authority.

Eighteenth. In case this agreement shall be adjudged illegal or invalid, or at the termination hereof, the S. Company shall and will deliver up and surrender to the O. Company the said railroads and other property hereby demised, assigned, or transferred, including the stocks and bonds of C. Railroad Company, the D. Railroad Company, and Railroad Company, the railroad and any lease thereof to the S. Company, except such as shall have been sold, abandoned, destroyed by the elements, or disposed of as here-

inbefore provided, in at least as good order and condition as the reasonable use and wear thereof will permit, and with such additions, betterments, or improvements as shall have been made thereto.

Nineteenth. In case the S. Company or the U. Company shall at any time or times hereafter, during the existence of this lease, fail to pay the sums hereinbefore provided to be paid by the S. Company, or any part thereof, when the same shall have become payable according to the terms hereof; and in case such default shall continue for the period of thirty days after demand, then and in every such case, unless the O. Company shall be in default, it shall be lawful for the O. Company, its successors or assigns, at their option, to enter, without process of law, unto and upon the said railroads and other property hereby demised, and every part thereof, and to have and to hold all such property, together with all the additions and improvements which shall have been made to the same; and all the right, title, and interest whatsoever of the said parties of the second and third parts, in and to the said property, shall thereupon wholly cease and terminate; and it is further agreed that such re-entry shall not waive or prejudice any claim or right of the O. Company to or for damages against the said parties of the second and third parts, or either of them, on account of such nonpayment, or on account of any non-performance or breach of the terms of this indenture.

Twentieth. And the O. Company, its successors and assigns, shall and will make and furnish to the said parties of the second and third parts, their successors or assigns, at least twenty days before the payment of the semi-annual or other interest on any of its bonds or obligations outstanding at any time during the continuance of this agreement, a statement of the bonds or obligations of the O. Company, or its successors, then outstanding, showing the names and places of residence of the holders of said bonds and obligations, so far as can be ascertained, and the amount of interest on said bonds or obligations then maturing, and payable at the next semi-annual or other day of payment, and shall and will, at all reasonable times, permit the said parties of the second and third parts, their successors or assigns, and such person or persons as may be appointed or designated by them for that purpose, to inspect the books and records of the O. Company, its successors and assigns, for the purpose of verifying such statements, and of ascertaining what, if any, of its bonds or obligations shall have been canceled or paid, purchased, retired, or redeemed.

Twenty-first. And the S. Company, in consideration of the covenants herein contained on the part of the U. Company to be performed, hereby covenants and agrees, to and with said U. Company, that all the said railroads hereby demised shall be operated, for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as continuous lines with the railroads now owned or hereafter to be owned or controlled by the S. Company, and with the railroad system of the U. Company; that there shall never be at any time during the said period of ninety-nine years, any discrimination, as to rates or otherwise, on said railroads or vessels, in favor of any other line, road, or transportation company, as against the U. Company, and that the rates for all through business, that is to say, for traffic carried to and from terminal, common, or competitive points upon the said railroads, which may be reached directly or indirectly by any railroads competitive to the U. Company, shall at all times be as low as by any other

railroad route, and that all unconsigned business destined for any points on, or reached by or beyond the railroads of the U. Company's system, received by the S. Company, as lessee of said O. Company's system, shall be turned over to the U. Company; and in consideration of the foregoing covenants the U. Company hereby covenants and agrees, to and with the O. Company, that it, the said U. Company, will and shall, and hereby does guarantee the prompt and faithful performance of each and all the covenants and agreements herein contained on the part of the S. Company to be kept and performed; and the S. Company shall be liable to said U. Company for any and all payments made by the latter under the terms hereof, over and above the amounts which the S. Company would otherwise be entitled to receive from the U. Company.

Twenty-second. And it is further understood and agreed that all disputes and differences arising at any time during the period of this lease, as to the due performance by any of the parties hereto of any of the covenants herein contained, shall be submitted to three arbitrators, one of whom shall be chosen by said O. Company, and one by said S. Company, and these two shall choose the third; and the award of these arbitrators, or any two of them, shall be binding and conclusive upon the parties hereto in respect of the question submitted; but any differences arising as aforesaid shall not interrupt the business of the said railroads, steam vessels, or telegraph lines, but such business shall continue as before, until the question in dispute shall have been settled by arbitrators, as aforesaid, and thereupon such payments or restitution shall be made, and such acts and things shall be done, as may be required by the award of the said arbitrators.

Twenty-third. This lease is to take effect and be in force as of the 1st day of January, ; and the possession, operation, and maintenance of the demised premises on and after the 1st day of January, , and, until the delivery of possession under this lease by the O. Company, shall be for the benefit and at the expense and risk of the S. Company; and the O. Company further agrees to place said railroads, steamboats, and other property hereby demised, in the possession of the S. Company immediately on the execution hereof, and the said O. Company shall pay and discharge all wages, salaries, debts, and liabilities contracted in connection with the demised premises, prior to the 1st day of January, , and shall be entitled to collect and retain all the earnings and income of the said demised property accruing prior to 1st day of January, ; and it is mutually understood and agreed that all the provisions herein contained shall be binding upon the respective successors and assigns of each of the parties hereto.

Twenty-fourth. And it is hereby mutually understood and agreed that the S. Company and the U. Company may, in their discretion and by consent of the O. Company, at any time during the continuance of this agreement, enter into and perform any contract whatsoever, not inconsistent with the terms hereof, with the N. Railway Company, or any other person or corporation, in relation to the management or operation of the said railroads, steam vessels, and other property of the O. Company hereby demised.

Twenty-fifth. And WHEREAS a doubt has been suggested as to the power of the U. Company to enter into and bind itself by the guarantee aforesaid; and, WHEREAS, said U. Company is advised that such guarantee is permitted by law and is in violation of no act of congress; and,

WHEREAS, all parties hereto are anxious not to exceed the powers granted

to them respectively by the acts of congress and the charters of said companies:

Now, THEREFORE, to meet the difficulty aforesaid, it is hereby agreed: That for the term of ten years from January 1, , the premises hereby demised shall be managed and controlled in the interest of all the parties hereto, according to their respective rights as aforesaid prescribed in this indenture, by a joint manager. is hereby appointed such manager for the term of three years from January 1, . In case of his death or resignation before the end of said term of three years, and at the end of said three years, his successors in succession shall from time to time be selected and nominated in writing by the presidents of the O. Company and the S. Company jointly, if they can agree upon such successor. If they fail to agree upon such successor then such successor shall be appointed by a disinterested umpire to be chosen by them. If they fail to select such umpire then such appointment shall be made by , or in case of his refusal or inability to act, by the judge of any circuit court of the United States acquiring jurisdiction in the premises, or by any such circuit court, or in case any such court has no jurisdiction, then by any court of competent jurisdiction over the parties hereto.

Said joint manager and his successor or successors shall manifest acceptance of the terms hereby prescribed in writing to the said presidents severally, before entering upon the performance of duties under this agreement.

If, during the term of ten years, the doubt hereinbefore suggested, as to the validity of said guarantee, shall not have been removed by the effect of any general or special act of congress, or anything done in pursuance of any such act, or by the decision of competent final judicial authority, that said guarantee, with or without further legislation, of said U. Company, is valid and binding upon said company, then said joint management shall cease, and the manager then in office shall thereafter account to and represent the lessee only and be subject to removal at the instance of the said lessee.

But in case, on the contrary, that during the term of ten years, aforesaid, congress shall fail to legislate as aforesaid, and it shall be ascertained during said term of ten years by competent judicial authority that the said guarantee is invalid and void, or in case of the default by said S. Company or U. Company to pay the sums of money, or any of them, or any part thereof, which by the terms of the nineteenth preceding article of this lease it has been provided shall be paid according to the terms of said clause, then and in each of said cases the O. Company may, at its option, by notice in writing to the presidents of the S. and U. Companies and the said joint manager, declare this lease at an end, and from and after the date of ten days from the receipt of such notice by him the said joint manager shall, by force of this agreement, and without any further action whatever, by any of the parties hereto, cease to act as joint manager, and thenceforward and thereafter shall be and act as the manager of the said demised premises for the O. Company only, and shall be subject to removal by it alone, and shall account to and act for it as if this lease had not been made, and thenceforward and thereafter all further performance of this lease shall cease, and the parties thereto, without any waiver or change of any of their obligations hereunder existing and accrued at the date of the receipt of such notice, but subject to the same, shall not longer be bound hereby, and this indenture shall thenceforward be deemed canceled and at an end. If this indenture is not terminated within said period of ten years, as in this article

provided, then the provisions in this article, made for a joint manager, shall cease, and the S. Company shall be at liberty to manage said demised property as provided and contemplated in and by the preceding articles of this indenture.

Article twenty-sixth. This indenture has been authorized by the shareholders of the U. Company, and it is agreed that it shall also be duly authorized or ratified by the shareholders respectively of the O. and S. Companies by due corporate action.

IN WITNESS WHEREOF, the said several corporate parties have caused this indenture to be executed by their respective presidents, and attested under their respective corporate seals.

[Here follows Schedule A.]

1233. Railroad Lease, Modifying the Last Preceding Form.

THIS INDENTURE, made this day of , one thousand nine hundred and eighty- , by and between the O. Railway Company, hereinafter called the O. Company, party of the first part, the S. N. Railway Company, hereinafter called the S. N. Company, party of the second part, and the U. Railway Company, hereinafter called the U. Company, party of the third part, WITNESSETH:

WHEREAS, the S. Railway Company, the R. Railway Company, and the C. U. Railway Company, together with certain other railway companies, were as of the date of , , consolidated into and under the name of the S. N. Railway Company, the party of the second part hereto, which consolidated company assumed all the obligations and agreements of the said several companies, including the obligations and agreements of the said S. Railway Company, under and by reason of an indenture, dated the day of , , by and between the S. Railway Company and the parties of the first and third parts hereto respectively (a copy whereof is hereto attached, and made a part hereof, and is hereinafter referred to and described as said indenture of lease¹), in which indenture of lease the O. Company did grant, demise, let, and lease unto the S. Railway Company, its successors and assigns, for the term of ninety-nine years from the 1st day of January, , all and singular the railroads and telegraph lines constructed or to be constructed, then owned by the O. Company, or which might be thereafter owned or acquired by it, by whatsoever title the same may be owned or held, and also all the lands, tenements, hereditaments, ways, and rights of ways, then owned, or held, or which might be thereafter owned, held, or possessed by the O. Company, for said railroads and telegraph lines, and for any and all purposes in connection with the construction, working, maintenance, and operation of the same, or any or all of them, and all the easements and appurtenances thereunto belonging, or in anywise appertaining, and also all branches, extensions, sidings, tracks, bridges, depots, fences, stations, section-houses, tanks, warehouses, freight-houses, engine-houses, car and machine shops, and all other buildings, fixtures, and improvements, of whatever kind and description, and wherever situated, then owned or held, or which might thereafter be owned or held by the O. Company, for the use of said railroads, or in connection with the working, maintenance, and operation of the same; also all locomotives,

¹ Referring to the last preceding form, No. 1232.

tenders, stationary engines, cars, trucks, push-cars, hand-cars, and all other rolling stock and equipments, and all the tools, and implements, machinery, fuel, materials, and supplies then owned, held, or possessed by the said O. Company, for use in connection with the said railroad and telegraph lines, or any of them, or in connection with the working, maintenance, and operation of the same, and also the railroad grades, or embankments extending from to on the railroad, as described and conveyed in said indenture:

And also all the steamships, steamboats, ferry-boats, tugs, barges, and other vessels, together with the tackle, furniture, boats, anchors, cables, and stores, thereunto belonging or in anywise appertaining, or intended for use in connection therewith, then owned, held, or possessed by the said O. Company, or which might be thereafter owned, held, or possessed by the said company, and also all wharves, docks, slips, inclines, warehouses, and other structures and fixtures, and all goods and chattels then owned or held by the said O. Company for use in connection therewith:

And also all rights, powers, privileges, and franchises, then owned or possessed by the said O. Company, in connection with the said railroads, telegraph lines, and vessels:

And also certain real estate and other property of the O. Company, not embraced within its mortgages, a schedule whereof is attached to the said indenture of lease, and thus made a part thereof, which premises were to be appraised as of their true value on the 1st day of January, 188 , under the direction of the presidents of the O. Company and of the S. Railway Company, and the amount, equal to their value, as ascertained by such appraisal, in five per cent. consolidated mortgage bonds of the O. Company, were to be delivered to the O. Company, for sale or disposal by it, and appropriation of the proceeds thereof to its own use:

Together with the rents, issues, and profits of all the said property thereby demised, and each and every part thereof:

Upon and subject to the terms, conditions, provisions, covenants, and agreements set forth and contained in said indenture of lease, dated the 1st day of January, ; and,

WHEREAS, the U. Company became and is a party to said indenture of lease, and thereby guaranteed the payment of the rental, and the performance of all and singular the obligations, covenants, and agreements contained and specified therein, by and on the part of the S. Railway Company to be paid, observed, kept, and performed; and,

WHEREAS, certain changes, modifications, and alterations of the said indenture of lease, as hereinafter contained, have been agreed upon, by and between the said parties hereto, to take and have effect as of the date of January 1, :

Now, THEREFORE, THIS INDENTURE WITNESSETH: That the parties hereto of the first, second, and third parts respectively, do, and each for itself, its successors and assigns, does hereby covenant and agree to and with the others of said parties respectively, as follows, that is to say:

First. The S. N. Company does hereby covenant and agree to and with the O. Company, that all the rolling stock of the O. Company shall be distinctly and legibly marked, by painting thereon, or otherwise, with the initials "O. R. Co.," and that all the rolling stock of other railroad companies, of which the

lines shall form part of the system of the O. Company, shall be marked in like manner with the initials of the railroad company to which such rolling stock belongs, and that said marks shall be kept and maintained on said rolling stock, and on all restorations thereof, and substitutions therefor, during the term of the said indenture of lease.

Second. The O. Company hereby covenants and agrees, to and with each of the other parties hereto, that it will forthwith, and from time to time, make execute, and deliver to the S. N. Company, proxies or powers of attorney irrevocable (except at the will of the S. N. Company), conferring upon the S. N. Company, or upon its lawfully appointed substitutes during the continuance of said indenture of lease, all the voting power which the said O. Company now holds, owns, or possesses, or may hereafter hold, own, or possess, by virtue of its ownership of or interest in the shares of the capital stock and bonds of the C. Railroad Company, and of the D. Railroad Company, and of any or either of them, and of any other company, the line of which, under the provisions of said indenture of lease, shall become and be considered a part of the system of railroads of the O. Company, except the power to vote to sell or mortgage the property or franchises of any of such companies.

And all the parties hereto covenant and agree to and with each other that the covenants and agreements contained in this article shall be additional and supplemental to article second of said indenture of lease, and shall, for all purposes of the said indenture, be so treated, construed, and carried into effect during the continuance thereof.

Third. All the parties hereto covenant and agree to and with each other that all the remaining bonds specified in subdivision three of article seventh of said indenture of lease shall be issued and delivered to the S. N. Company for any of the purposes named in the eighth article of said indenture of lease and the fourth and the fifth articles of this indenture, and from time to time on demand of the said S. N. Company when the said O. Company is entitled to issue the same.

But it is agreed that none of the said bonds shall be sold except at a price assented to by all the parties hereto, nor shall any of the said bonds be pledged or otherwise disposed of except with the consent of the O. Company, but the O. Company agrees to consent to such pledge or other disposition of said bonds, prior to the sale thereof, as will aid in the accomplishment of the purposes hereinbefore specified; and it is further agreed that the said bonds shall not be delivered to the S. N. Company, except when required for some one or more of the purposes hereinbefore specified, and that meanwhile they shall remain with the trustee of the mortgage securing said bonds, to be delivered by it only upon demand in writing signed by the said O. and S. N. Companies.

Fourth. The O. Company shall permit the S. N. Company, in its behalf, to furnish and supply for the use and operation of the railways demised or forming a part of the system of railroads of the O. Company, such additional equipment, including boats and vessels of all kinds, as may be required by the S. N. Company, to be used for and in the operation of said railways, and for the business thereof, to the extent of the proceeds of the consolidated bonds so used and specified in subdivision three (3) of article seventh of said indenture of lease, and to the extent that the O. Company shall hereafter agree that the proceeds of its other bonds, securities, or guaranties may be so used, but to no further or greater extent; provided, always, that such additional equipment

shall not be so furnished to replace any equipment worn out or destroyed in service, and only such additions to equipment shall be made as the actual growth of the business may require; and the O. Company shall also from time to time permit the S. N. Company in its behalf to furnish, construct, and complete all necessary and convenient betterments, and permanent improvements to said railways, and their appurtenances, to the extent of the proceeds of the bonds, securities, and guaranties above described, but such betterments and improvements shall consist of the following items only: (1) The cost of iron, or steel, or stone bridges in excess of wooden bridges; (2) the cost of the purchase of, or the building of additional docks or wharves; (3) the cost of steel rails in excess of iron rails; (4) the cost of extra weight of rails laid in excess of the weight of those removed; (5) double tracks, new sidings, new switches, and frogs, new depot and other buildings, and their appurtenances; (6) corrections of alignments of the track, but in case of any such correction, the cost whereof shall exceed \$15,000, the approval thereof by the board of directors of the O. Company shall first be obtained, provided, however, that for the correction of the alignment of the track between P. and D., which shall be speedily done, for which correction the authority and approval of said board is now hereby given, the cost thereof shall not exceed hundred thousand dollars, without the consent of the O. Company; and plans and estimates therefor, and for all alignments, shall be submitted by the S. N. Company to the O. Company for its approval, and if the O. Company shall not approve said estimates, the O. Company shall perform the work at its actual cost, which shall not exceed the cost thereof as stated in said estimates. And the S. N. Company shall render to the O. Company statements of account of the proceeds of all such consolidated mortgage bonds, and of the expenditure thereof; provided always, that the aggregate sum expended in any calendar year, for purposes mentioned in this article, other than the correction of the alignment of track between P. and D., shall not exceed hundred thousand dollars, without the approval of the O. Company.

It is mutually covenanted and agreed that all additional equipment, betterments, and improvements of the kind and character hereinbefore specified, that have been furnished and supplied, or constructed by the S. N. Company since the 1st day of January, , to or upon any railways or premises demised by the said indenture of lease, or forming part of the system of railroads of the said O. Company, shall be considered as having been made by the S. N. Company on behalf of the O. Company, under this article, and as if the provisions thereof had been contained in the said indenture of lease; provided, however, that the aggregate amount for which the S. N. Company shall be reimbursed, for all expenditures upon all equipment, betterments, and improvements heretofore provided and made, shall not exceed hundred thousand dollars; and, provided further, that no such expenditure shall be considered as having been made on behalf of the O. Company, except such as shall be expressly approved and audited by its officers; and, provided further, that in case there is any difference of opinion with regard to the propriety of allowing any such expenditure, the question as to the allowance thereof shall be determined by arbitration as provided in article twenty-two of said indenture of lease.

IT IS FURTHER AGREED, that nothing in this indenture contained, except as specified in this article, shall lessen or change the obligations of the said S. N.

Company under article fourteenth of said indenture of lease, and that all the obligations of said S. N. Company, under said article fourteenth, and under said indenture of lease, as modified hereby, shall extend to and cover all railroad and branch lines built or purchased, in pursuance of any provision in said indenture of lease, or in this indenture.

Fifth. In case the said five per cent. consolidated bonds, or the proceeds thereof, shall not be available or sufficient to provide funds for the construction and equipment of railroad lines, as provided in the eighth article of the said indenture of lease, or for the construction and equipment of branch roads, as provided in the fourth article hereof, or in case in the opinion of all the parties hereto it shall not be desirable at any time so to apply such bonds or proceeds, it is agreed that then, and in every such case, the said O. Company will make and issue its other bonds, securities, or guaranties, the same to be secured by the mortgage, pledge, and deposit of the bonds of such railroad lines, or of such branch roads, or to be otherwise secured, as shall then be agreed between the parties hereto; it being understood and agreed that no such roads or branch lines can in any case be built without the consent of all the parties hereto, and that such roads or branch lines, when built, are to be built at the expense of the said O. Company, and the moneys for building the same are to be furnished on the credit of the said O. Company, by the issue and sale of bonds, securities, or guaranties, secured in the best way that shall then be agreed upon between the parties, and be found lawful and practicable; it being further agreed that the amount of interest which shall from time to time become due and payable on all bonds, securities, and guaranties, so issued and used, shall be paid by the said S. N. Company, as an additional amount due from it under article thirteenth of said indenture of lease, and such payment by the S. N. Company is hereby guaranteed by the said U. Company, exactly as if the said bonds or obligations had formed a part of said consolidated bonds.

IT IS FURTHER AGREED, that any residue or surplus of such bonds, securities, or guaranties, so issued, or of their proceeds, over and above the amount necessary to provide for the actual cash cost of the construction and equipment of any such branch road, shall from time to time as needed be used for the purchase of additional equipment for such branch road, and for the making thereupon of any of the betterments or improvements specified in the fourth article hereof, subject to the same limitations as are contained in article four hereof.

IT IS FURTHER AGREED, that the S. N. Company shall have the same rights with respect to the bonds and stocks of such branch roads, and to the interest and dividends thereon, as if they had been built under and in pursuance of article eighth of said indenture of lease, and that the stocks of the said branch roads shall be held and remain in the treasury of the O. Company, subject to and covered by the lease, and the S. N. Company shall be entitled to have proxies thereon as provided in the second article hereof.

Sixth. It is hereby mutually covenanted and agreed by all the parties hereto that no expenditures, of whatever kind or character, made by the S. N. Company upon, in, or about the railways and property of the O. Company, for the construction or acquisition of branch lines, or other railroads, or for equipment, betterments, or any purpose, except to the extent of the bonds, or proceeds of bonds, securities, or guaranties specifically appropriated therefor,

as provided in said indenture of lease, and in this indenture, shall ever be charged to or chargeable to or against the O. Company, or ever constitute in any way any claim against the O. Company or its property.

Seventh. All the parties hereto covenant and agree to and with each other, that article twenty-fifth of said indenture of lease shall for all the purposes of this indenture be treated, and considered, and carried into effect during the continuance of this indenture, as if the said article read as follows: [*here insert new provisions.*]

Eighth. And the said indenture of lease with the modifications herein contained is hereby ratified and confirmed by all the said parties.

IN WITNESS WHEREOF, said several corporations, parties hereunto, have caused this indenture to be signed by their respective presidents, and their respective corporate seals to be hereto affixed, in quadruplicate originals, the day and year first above written.

1234 Traffic Agreement Between two Railroad Companies.

AN AGREEMENT, made the day of , in the year nineteen hundred and , between the S. N. Railway Company, incorporated under the laws of , , and (hereinafter called the S. N. Company), party of the first part, and the U. Railway Company, incorporated by the laws of the United States (hereinafter called the U. Company), party of the second part.

WHEREAS, the S. N. Company is a corporation organized and existing under the general laws of , , and , by consolidation of [*here recite formation of company*], and is entitled, subject to the indentures of mortgage mentioned in the schedule hereto, to certain main and branch lines of railway now constructed for a distance of 1,500 miles, and described in the indenture of mortgage dated the 1st of August, , and mentioned in the schedule hereto, and has authority to construct extensions and branches of its said railways; and,

WHEREAS, the U. Company is a corporation created by and existing [*here recite formation of company*]; and the U. Company now owns, or controls, and works railways extending from in , to , in ; and,

WHEREAS, the railway of the S. N. Company connects with the main line of the railway of the U. Company at , in the state of , and at , in the territory of , and it will be beneficial to the S. N. Company that its railways shall be worked in close connection with, and as a feeder of the main line of railway of the U. Company, and so as to furnish transportation facilities to the settlers on the lands now or late of the U. Company, to develop the resources of the lands contiguous to the line of railway of the S. N. Company, and to secure to the parties hereto, and not to any hostile or rival railway company, the benefits and advantages that shall arise from the construction and working of the railway of the S. N. Company; and,

WHEREAS, the U. Company has agreed to enter into this contract for the purpose of enabling and aiding it to perform its pecuniary and other obligations to the United States, and its duties to the public, and for the further purpose of assuring to itself an increase of traffic, and other benefits and advantages which will arise from the interchange of traffic with the railway of the S. N. Company, and a close connection and alliance with that company, and because the working of the railways of the parties hereto in harmony

with each other, as herein provided, will be beneficial to each of the parties hereto:

NOW, THEREFORE, IT IS HEREBY AGREED, by and between the parties, as follows:

1. The S. N. Company agrees that all extensions and branches of its said railway hereafter constructed or acquired shall be constructed, completed, and equipped in a thorough and workmanlike manner, to the satisfaction in all respects of the chief engineer for the time being of the U. Company, and upon such line as shall be approved by or be satisfactory to the board of directors of the U. Company, and that the S. N. Company will at all times keep and maintain its said railway, and all extensions and branches thereof, in good working order, and fully equipped, and will at its own cost always maintain the connection of its said railway with the railway of the U. Company, at or near the said towns of and , or at such other point or points as may be agreed upon, and in such manner as such chief engineer of the U. Company shall direct or approve. And the S. N. Company will, within a reasonable time after notice that such is the desire of the U. Company, extend the said railway of the S. N. Company to such other point or points, and construct such branch or branches (so far as it lawfully may) as the U. Company shall specify, and every such extension and branch shall be constructed, completed, equipped, and maintained in the manner herein mentioned, and be subject to all the provisions herein contained, in respect of the said railway. The said railway shall be of the same gauge as that of the U. Company.

2. The S. N. Company agrees that its said railway, and every extension and branch thereof, whether already, or to be hereafter constructed or acquired, and every railway or line that it may at any time acquire possession or control of, by purchase, consolidation, lease, control of capital stock, contract, or otherwise, shall, for all purposes of traffic (so far as the public and the government are concerned), be worked as one continuous line with the railway of the U. Company, and the railways and lines worked or controlled by it, or worked as continuous lines with its railway by agreement with it (hereinafter called its auxiliary system), and, so far as reasonably practicable, without change of cars, and that the S. N. Company will never make any discrimination, as regards rates or otherwise, in favor of any other line of railway or transportation company, as against the U. Company and its auxiliary system, and that the rates for all traffic, carried between any places by the railways of both parties hereto, shall always be as low as the rates for carrying such traffic between the same places by any railway or railways competing with the railways of the parties hereto; and that all traffic received by the S. N. Company, to be carried to or by way of any place or places on the line of the U. Company or its auxiliary system, shall, so far as the S. N. Company can lawfully determine the route of such traffic, be carried by way of the railway of the U. Company and its auxiliary system, and for that purpose be delivered to it at the points of junction; and the S. N. Company will always use its influence in favor of such traffic being so carried, and will always work its railway and branches in close harmony and connection with the railway of the U. Company and its auxiliary system, and not in hostility or antagonism thereto, or in the interest of any line or railway competing with that of the U. Company or its auxiliary system, and will not at any time

make any contract with any other railway company or line for connection or interchange of traffic, or make any lease or mortgage of its railway or any part thereof, or create or suffer any lien or incumbrance thereon, or issue stock, without the previous assent of the U. Company, expressed by resolution of its board of directors.

3. The U. Company agrees that its said railway and auxiliary system shall for all purposes of traffic (so far as the public and the government are concerned), be worked as one continuous line with the railway of the S. N. Company, and, so far as reasonably practicable, without change of cars, and that it will never make any discrimination, as regards rates or otherwise, in favor of any other line of railway or transportation company as against the S. N. Company, and that the rates for all traffic carried between any places by the railways of both parties hereto shall always be as low as the rates for carrying such traffic between the same places by any railway or railways competing with the railways of the parties hereto; and that all traffic received by the U. Company, to be carried to or by way of any place or places on the line of the S. N. Company, and not on that of the U. Company or its auxiliary system, shall (so far as the U. Company can lawfully determine the route of such traffic), be carried by way of the railway of the S. N. Company, and for that purpose be delivered to it at some point of junction; and the U. Company will always use its influence in favor of such traffic being so carried, and will always work its railway and auxiliary system in close harmony and connection with the railway of the S. N. Company, and not in hostility or antagonism thereto, or in the interest of any line or railway competing therewith.

4. The rates of charges for all descriptions of traffic carried by the railways of both parties hereto, and delivered by one to the other for carriage, as above mentioned, shall be fixed and determined from time to time by the mutual agreement of the parties hereto, and the gross receipts therefrom shall be apportioned between them according to the distance that the same shall have been carried upon the railway or system of each of them; but if and when it shall happen that the share of the gross receipts that the S. N. Company shall be entitled to upon such apportionment, added to its gross receipts from its local and other business, and from all its other sources of income, is insufficient to enable it to meet and pay, as the same become due and payable, its working expenses, taxes, ordinary repairs, including all such repairs as may be necessary to keep and preserve its road, rolling stock, and works in first-rate condition (but not including improvements or additional equipment), and also the interest of the bonds, for the time being, secured by any of the indentures mentioned in the schedule hereto, then the said gross receipts from all such traffic shall be so apportioned between the parties, that the sum of money allotted to the S. N. Company upon such apportionment shall (so far as the whole of the said gross receipts shall be sufficient for the purpose), be sufficient, with its gross receipts from its local and other business and other sources of income, to enable it to meet and pay, as the same become due and payable, its said expenses, taxes, and repairs, and the said interest.

5. If, and as often as either party shall, at any time during the continuance of this agreement, make a claim that it is reasonably and fairly entitled to a larger share of the gross receipts than that provided for in this agreement, such claim shall be referred to the determination of four arbitrators, of whom two shall be nominated by the board of directors of the U. Company, and shall

be directors thereof, and two shall be nominated by the board of directors of the S. N. Company, and each of the two last mentioned shall be a director thereof, and not be a director of the U. Company, or shall be an indifferent person experienced in matters relating to railway traffic; and the said four arbitrators shall hear the parties, and taking into account all matters and things proper to be considered in determining the shares of the joint earnings that ought fairly to be allotted to connecting lines, shall fix and determine the shares of the said gross receipts from joint traffic that shall thenceforth be allotted to the parties respectively, instead of the allotment provided for in this agreement; and the award that shall be made in writing under their hands by the said arbitrators, or a majority of them, shall be conclusive and binding on the parties hereto; and if a majority of the said arbitrators shall not agree upon the shares so to be allotted, then they, or a majority of them, shall appoint in writing under their hand a fifth arbitrator, who shall be an indifferent person, experienced in matters relating to railway traffic, and the five arbitrators shall thereupon, without any further hearing of the parties, fix and determine the shares so to be allotted to the parties respectively, and the award that shall be made in writing, as aforesaid, by the said five arbitrators, or a majority of them, shall be binding on the parties hereto; and in case any of the arbitrators so appointed originally, or by way of substitution in pursuance of this provision, shall die, or refuse, or be incapable to act as such arbitrator before such final determination, then in every such instance, the party that appointed such arbitrator, or, if he was a fifth arbitrator, then the other arbitrators shall appoint another arbitrator having the like qualifications in his place; and if either party shall fail to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for fifteen days after the other party shall have appointed arbitrators, and served the party so failing to appoint with notice in writing to make the appointment, then at the request of the other party, the arbitrators already appointed shall be the sole arbitrators; and if the arbitrators shall fail to appoint a fifth arbitrator, either originally, or by way of substitution as aforesaid, within fifteen days after they are at liberty to appoint a fifth arbitrator, and after either party shall have served them with a written notice to make such appointment, then each of the parties may nominate for such fifth arbitrator a person having such qualifications as aforesaid, who shall, if they nominate the same person, be the fifth arbitrator, and if the parties nominate different persons, then one of them shall be chosen the fifth arbitrator, by lot to be drawn in the presence of the arbitrators, or such one or more of them as shall attend, by one of the arbitrators appointed by the U. Company, or if there is not one of them present, and willing to draw, then by one of the arbitrators appointed by the S. N. Company. And every arbitrator, appointed as hereinbefore provided, as a substitute, shall have the same powers and authority as the arbitrator for whom he is substituted would have had if he had acted or continued to act.

6. The U. Company agrees that, upon notice given to it from time to time by the S. N. Company, that any branch, or extension, or second track or line of its railway comprised in the indenture of mortgage dated the 1st of August, , and mentioned in the schedule hereto, has been completed for use for any specified distance, not less than five miles, in addition to the said 1,500 miles already completed as aforesaid, and connected with the railway of the U.

Company, or its system, the U. Company will cause such section so completed forthwith to be inspected by its chief engineer or acting chief engineer, and if he shall report that the same is completed, ready for use, as herein provided, the U. Company will at once approve and accept the same.

7. The U. Company agrees that it will from time to time, at the request of the S. N. Company, indorse and execute upon each of the consolidated first mortgage bonds of the S. N. Company, certified in accordance with the provisions of the said indenture of mortgage of the 1st day of August, 188 , and intended to be issued in respect of the said 1,500 miles of railway already completed, or of any section of railway hereafter completed, and approved, and accepted as hereinbefore provided, a guarantee in the words following:

The S. N. Railway Company, the obligor herein, having granted to the U. Railway Company certain perpetual rights, privileges, and easements, and having also entered into a perpetual agreement with it for the interchange of business, dated the day of , 188 , and the U. Railway Company, in consideration thereof, having agreed, as therein provided, to such a division of joint earnings as shall be sufficient, with the other net earnings of the S. N. Railway Company, to provide for the payment of the interest as it becomes due on this series of bonds; now, in consideration thereof, and of one dollar to it in hand paid by the said obligor, the U. Railway Company hereby guarantees to the holder hereof for the time being that the obligor herein will pay each of the coupons attached to this bond when it falls due.

IN WITNESS WHEREOF, the U. Railway Company hath caused this undertaking to be executed under its corporate seal.

[SEAL.]

U. Railway Company,

By *President.*

ATTEST:

 , *Secretary.*

8. In case the S. N. Company shall not pay the interest of the bonds for the time being secured by the indentures mentioned in the schedule hereto, as it becomes due and payable, and the principal of the said bonds when it becomes due and payable, then the U. Company shall be at liberty to make all or any of the said payments in respect of which the S. N. Company shall be in default, but without discharging the liability of the S. N. Company in respect thereof, and the U. Company shall, to the extent of such payments by it, be subrogated to and have all rights and claims against the S. N. Company, and the railway and property comprised in the said mortgage, and all benefit of the provisions of the said indenture that the holders of the said bonds were entitled to.

9. The S. N. Company agrees that so much of the said gross receipts from joint traffic as it shall be entitled to in any calendar year shall be applied by it, and be subject to the trust that the same shall be applied to the payment of the interest of the said bonds, or such of the said interest as shall become due and payable during the same year, or within four months thereafter, except so far as the same shall be required for payment of its said expenses, taxes, and repairs.

10. And it is further declared and agreed between the parties hereto that it is a fundamental consideration of the covenants and agreements of the U. Company, as herein contained, that the railway of the S. N. Company, when

and as completed, shall be worked in connection and in harmony with the railway of the U. Company, as herein provided, and never in hostility thereto, and that traffic shall be interchanged in perpetuity between the said companies, as herein provided, and that it is in reliance upon this that the U. Company has entered into this contract. And the better to enable the U. Company to secure itself against loss by reason of its compliance with the terms of this contract, the S. N. Company hereby further agrees with the U. Company that it will, upon its demand therefor, execute to it an indenture of mortgage of the railway and properties of the S. N. Company, conditioned to secure to the U. Company that the S. N. Company will during the existence of this contract, comply with all the terms thereof on its part, with provision therein entitling the U. Company, for its better security to the possession and use of the said railway and properties of the S. N. Company, before as well as after default on the part of the S. N. Company, under which indenture the U. Company shall have the rights of a mortgagee in possession for its security and benefit. It is further agreed that meanwhile, and until such indenture shall be executed, anything in the foregoing agreement to the contrary notwithstanding, to the end of securing the U. Company as aforesaid, the U. Company may enter upon the possession of the said railway of the S. N. Company already completed, and of all sections of its railway hereafter constructed, upon the completion and acceptance thereof as hereinbefore provided, in which case the U. Company hereby agrees with the S. N. Company that it will work such railway in the same manner as the S. N. Company is now or may at any time hereafter be required by law to do, and that the U. Company shall and will at all times during the continuance of this agreement, and while it is so in possession, maintain, preserve, and keep the said railway and property, and every part of the same, in repair, and working order and condition, and, while in such possession, supply any rolling stock and equipment needed, to the end that the business of the said railway shall be preserved, encouraged, and developed, and the same done with safety and expedition, and the public accommodated in respect thereto, and shall and will, while so in possession, do and cause to be done, to and upon the said railways and property, such repairs and renewals as may be reasonably required, and will from time to time, while so in possession, pay and discharge any and all taxes upon the property of which it is in possession, and perform all the public duties of the said S. N. Company in respect of such railway and the working thereof, and the said U. Company, while so in possession, shall work the same in conformity with the requirements of this contract, and will keep full and accurate accounts of all business done upon the said railway, and of all moneys expended or liabilities incurred in connection therewith, in such manner as to show the sources from which moneys are received, and for what purposes expended, and to show the pro rata share of the earnings from the business passing from either of the lines of the parties hereto to the lines of the other, which accounts shall be kept separate and distinct from the accounts of any other railway, and so as to show the gross and net earnings of the said railway of the S. N. Company, which accounts shall be open to the inspection and examination of the president of the S. N. Company, and of the trustee or trustees of the said indenture of the 1st of August, , and the U. Company further covenants to furnish to the S. N. Company, and the said trustee or trustees, if requested, at least

once in each year a duly authenticated account of the earnings, income, and receipts of the said railway, and the expenses of working the same, and of the expenditures made by the U. Company thereon, or in respect thereto, for repairs, renewals, or otherwise. The U. Company, while so in possession, shall make out and furnish to the S. N. Company, or to any public officials entitled to demand or receive the same, any and all reports or statements which the S. N. Company is now or may hereafter be required to make or file by virtue of the laws applicable thereto. And the U. Company, while so in possession, shall and will pay and discharge from the earnings of the S. N. Company any and all expenses, costs, damages, and liabilities which shall arise out of the possession and management of the said railway, or out of the business of the same, and will defend all actions, suits, and claims which shall be brought against the S. N. Company, during such time, in respect thereto, and the president and vice-presidents of the S. N. Company shall have the right to travel over the said railway at all times, without charge, for the purpose of inquiring into and examining the business of the same. It is furthermore agreed between the parties hereto, that the U. Company may, after entering into and upon such possession, elect to surrender the same to the S. N. Company, in which case the S. N. Company shall work the said railway in conformity with this contract, and with all the provisions thereof, and shall keep and perform the same in all respects.

11. It is declared that the agreements herein contained are made between and for the benefit of only the parties hereto, and may be altered, or put an end to at any time by the parties. And the invalidity of any one or more of the agreements and provisions herein contained shall not impair or affect the validity of any other, or defeat the substantial purpose hereof. And in case it happens that any of the agreements and provisions herein contained is invalid by reason that the same is beyond the powers of the parties hereto, or either of them, or contrary to some provision of law, or for any other reason, then no liability shall arise or exist on the part of either of the parties hereto, or any officer of either of them, to the other party or any other person by reason of the attempted making of such agreement or provision, or by reason of its invalidity, or any act or thing previously done, or afterwards to be done in pursuance hereof. And the agreements herein contained on the part of the U. Company shall determine and cease to be binding on the U. Company, if it be the law, and shall be so determined by the final judgment or decree of a court of competent jurisdiction, that the provisions of this agreement are so far invalid that the U. Company is not entitled by virtue thereof to possess and work the railway of the S. N. Company, as herein provided, and to enforce the performance and observance by the S. N. Company of its agreements herein contained, for or in respect of the working of its railway as a continuous line, and in connection with that of the U. Company, and for the apportionment of the receipts from the joint traffic. And in such case the U. Company, if it is then in possession of the said railway and property of the S. N. Company, shall deliver up possession of the same to the S. N. Company, with all additions and improvement thereto, and free from all obligations and liabilities incurred in the working of the said railway by the U. Company.

12. In case the U. Company, while in possession of the railway of the S. N. Company, by virtue of the provisions hereof, shall fail to pay the interest

of the said bonds, so far as the earnings of the railway of the S. N. Company shall be sufficient for that purpose, after paying its working expenses, taxes, and repairs hereinbefore mentioned, and such default shall continue for ninety days after such interest shall have been demanded, then it shall be lawful for the S. N. Company, without any process of law, peaceably to enter into and upon its said railway and premises, and re-possess itself of the same.

13. Nothing contained in these presents is intended or shall be taken or construed to create a mortgage, or pledge, or charge at law, or in equity, of, or upon any property or earnings of the U. Company, or to impair or affect any duty or obligation of the U. Company to the government of the United States under its charter, or any act of congress.

IN WITNESS WHEREOF, the said S. N. Railway Company and the said U. Railway Company have hereto affixed their respective common seals, and caused these presents to be signed by their respective presidents, and attested by their respective secretaries, the day and year first above written.

[Signatures and seals.]

Annex the schedule above referred to.

II. STATUTORY FORMS AND FORMS IN GENERAL USE IN THE VARIOUS STATES.

ALASKA.

1235. Mining Lease.

THIS INDENTURE, made the day of , 19 , between , lessor, and , lessee,

WITNESSETH, that the said lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter agreed upon, and by the said lessee to be paid, kept and performed, has granted, demised and let and by these presents does grant, demise and let unto the said lessee all the following described mine and premises situate in mining district in the territory of Alaska, United States of America, to wit: [*description*].

To HAVE AND TO HOLD unto the said lessee the said mining property together with the appurtenances for the term of years from the date hereof, expiring at noon on the day of , 19 , unless sooner forfeited or determined through violation on the part of said lessee of any covenant herein contained.

And in consideration of the said lease, the said lessee does covenant and agree with said lessor as follows, to wit:

To enter upon said mine and premises and at his own expense work the same mine-fashion according to the prevailing rules of good and economical mining and to take out the greatest amount of gold possible with due regard to the safety, development and preservation of the said premises as a workable mine.

To work said mine, as aforesaid, steadily and continuously from the date of this lease during those months and days of the year that mines of a similar kind in the same locality are worked.

To allow said lessor and his duly authorized agents to enter upon all parts of said mine at any time for the purpose of inspection, with every access to all sluice-ways, sluice-boxes and rockers and to use all other facilities neces-

sary or convenient to enable said lessor to properly inspect said mine; and, in case said mine is worked by using ground sluice-ways or sluice-boxes, or both, or in any other manner requiring a periodical clean-up, a clean-up shall be had both as to time and manner according to the prevailing usages of miners in said vicinity; and said lessee shall, days prior to any clean-up, give said lessor, or his duly authorized agent, written notice of his intention to make a clean-up in which shall be specified the time when such clean-up will begin; and it is agreed that, as to all mining operations on said premises conducted by sluicing either on the ground or by means of sluice-boxes or in any other manner requiring a periodical clean-up, all gold and other precious metals dug from said mine shall be and remain the property of said lessor until after clean-up had as above stipulated; at which time such gold and other precious metals shall be divided, per cent. thereof to be retained by said lessor and per cent. thereof to be paid to said lessee; and as to all mining operations on said premises conducted by panning or by rocking or by any other means than by sluicing, the title and ownership of all gold and precious metals so mined shall be and remain in said lessor and held and retained by said lessee as lessor's agent until such a time as an accounting may be had between the parties hereto, at which time per cent. of such gold and other precious metals shall be retained by said lessor and per cent. paid to said lessee; that such accounting may be had at any time upon written demand of either of the parties hereto served upon the other; but all gold and other precious metals dug from said mine by said lessee, his employees, agents or servants or his successors in interest after the termination of this lease, whether the same be terminated by lapse of time or notice as herein provided, shall at once become the property of said lessor and said lessee shall not have the right to any part thereof.

To not assign this lease or any interest thereunder and to not sub-let the said premises or any part thereof without the written assent of said lessor and to not allow any person or persons, except the said lessee and his workmen, to take or hold possession of said premises or any part thereof under any pretense whatever. And in case any lodes, ledges or any kinds of deposits of precious metal are discovered on said property while working under this lease, to not locate or record the same except in the name of said lessor; and said lessee is hereby given the power to locate and record any such lodes, ledges or deposits in the name of said lessor, provided the same are not already covered by said lessor's location or right; to keep at all times the shafts, drifts, tunnels and other passages and workings of said premises thoroughly drained and clear of loose rock and rubbish.

To deliver up to said lessor the said premises with the appurtenances and all improvements thereon by whomsoever made or erected, including all cabins, houses and sluice-boxes, with all the sluice-ways, shafts, tunnels and other passages thoroughly clear of rubbish and drained and the mine in all points ready for continued immediate working (accidents not arising from negligence alone excusing) without demand or further notice on the said day of , A. D. 19 , at noon or at any time previous upon demand in case any of the covenants of this lease shall have been violated by said lessee.

And, upon the violation by said lessee or any person under him of any covenant hereinbefore reserved, this lease shall at the option of said lessor

expire and the said premises with the appurtenances and improvements above described shall become forfeited to said lessor and said lessor or his duly authorized agent may thereafter demand, in writing, immediate possession of said premises, enter upon the same and dispossess all persons in occupation thereof with or without force and with or without process of law, or, at the option of said lessor, said lessee and all persons found in occupation may be proceeded against as trespassers from the beginning of said term or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors and administrators of all the parties hereto; and to the assigns of said lessor, and, as said lessor may elect, to the assigns of said lessee.

Whenever in this lease the term "duly authorized agent" of said lessor is referred to, the same is meant to refer to any person who is authorized in writing by said lessor to do the act or thing referred to and shall be made to include any person who shall have a general power of attorney to lease or let out on lays the mining property of said lessor.

IN WITNESS WHEREOF, the said parties, lessor and lessee, have hereunto set their hands and seals.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

ARIZONA.

1236. Lease.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , the part of the first part, and , the part of the second part, WITNESSETH, that the said part of the first part do by these presents lease and demise unto the said part of the second part [description], with the appurtenances, for the term of from the day of , one thousand nine hundred and , at the rent or sum of dollars, payable in gold coin of the United States of America, in advance, on the day of each and every month during said term, .

And it is further agreed, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, that it shall be lawful for the said part of the first part to re-enter the said premises, and remove all persons therefrom. And the said part of the second part do hereby covenant, promise and agree to pay the said part of the first part the said rent, in the manner hereinbefore specified, and not to let or underlet the whole or any part of the said premises without the written consent of the said part of the first part . And that at the expiration of said term, the said part of the second part will quit and surrender the said premises in as good state and condition as reasonable use and wear thereof will permit (damage by the elements excepted) .

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands the day and year first above written.

[Signatures.]

Signed and delivered in the presence of

[Signatures.]

1237. Lease of Mining Claim.

THIS AGREEMENT OF LEASE, made and entered into this day of
 A. D. 19 , by and between , part of the first part, and , part of
 the second part, WITNESSETH, that the said part of the first part, for and
 in consideration of the rents, covenants and agreements hereinafter expressed
 to be paid, kept and performed by the said part of the second part, ha
 leased, let and demised, and by these presents do lease, let and demise unto
 the said part of the second part, the following described premises, to wit:
 [description].

To HAVE AND TO HOLD, for the purpose of mining, with no power to assign
 or sub-let the whole or any part of said premises, for the term of from
 the date hereof. Said part of the second part, for and in consideration of the
 premises aforesaid, ha covenanted, contracted and agreed, and by these
 presents do covenant, contract and agree with said part of the first part,
 heirs, executors, administrators, successors or assigns, to commence
 work on said premises , and to work the same continuously and
 with reasonable diligence, in thorough and workmanlike manner, keeping the
 same securely timbered in all parts during the term of this lease; to keep
 accurate accounts, and to render statements, accompanied by vouchers,
 to the said part of the first part, agent or attorney, showing the amount
 of all ore taken from said premises and the yield of the same, and the cost
 of hauling and milling the same, and to pay to said part of the first
 part, agent or attorney, as rental for said premises, as follows, to wit:
 [give terms of rental].

Said part of the second part furthermore agree that the said part of the
 first part, agent or attorney, shall have the right at any and all times
 to enter upon and descend into any and all parts of said premises, and that
 the said part of the second part will render to all the assistance in
 power in so doing. Said part of the second part furthermore agree
 that if he shall discover in working said premises any side veins, spurs or
 feeders, said side veins, spurs or feeders shall be and remain the property of
 the said part of the first part.

It is expressly understood and agreed by and between the parties hereto,
 that this lease shall be void in case of a sale of said premises for a valuable
 consideration .

Said part of the second part furthermore agree that in case he fail
 to commence work on said premises as aforesaid, or to work the same con-
 tinuously and with reasonable diligence and in workmanlike manner, or to
 keep the same securely timbered, or render said statements, or to pay said
 rentals as aforesaid, or in any respect to keep and fulfill any and all of the
 agreements herein expressed or implied, then, and in that case, it shall be
 lawful for the said part of the first part, agent or attorney, to declare
 this lease void and of no effect thereafter, and without process of law to
 enter upon and take possession of said premises; and in such case, as well
 as in case of a sale of said premises as aforesaid, and also at the expiration
 of this lease by limitation, said part of the second part agree to surrender,
 yield and deliver to said part of the first part, heirs, administrators,

executors, successors and assigns, quiet and peaceable possession of said premises in good condition.

IN WITNESS, etc.

[Signatures and seals.]

ARKANSAS.

1238. Lease and Crop Contract.

THIS ARTICLE OF AGREEMENT, this day made, executed and entered into by and between , party of the first part, and , party of the second part,

WITNESSETH, the party of the first part, for and in consideration of the covenants, promises and agreements of the party of the second part, and their due and faithful performance, as hereinafter set forth, agrees to, and hereby leases, rents, and to farm, lets to said party of the second part, for the year 19 , acres of land, on the , in county, Arkansas, described as follows: [description] and agrees to keep said second party in peaceable and lawful possession thereof until the end of the year, or until the crop is gathered.

AND FOR AND IN CONSIDERATION of the rent and use of said premises as aforesaid, the said party of the second part agrees to plant, in proper time, said land acres in corn and acres in cotton; to properly and in proper time, cultivate and gather said crop, and to pay to the said first party as rent, by the day of , or as soon before that time as a sufficient amount of the crops can be gathered, the sum of per acre, or of the cotton and cotton-seed and of the corn.

AND IT IS FURTHER AGREED by the party of the second part, as a part of this contract, that if proper ginning facilities are furnished on the farm of which the premises are a part, that the cotton crop shall be ginned there.

AND IT IS FURTHER AGREED that if at any time, the party of the second part shall neglect or fail to plant, cultivate, gather or otherwise care for, or do anything necessary to be done toward the planting, making or gathering of said crop, at the proper time and in the proper manner, the party of the first part may, at his option, take charge of said premises and all crops thereon, and do any and all work necessary to be done in and about said crop, to be charged to the second party and against said crop, and may retain possession thereof at his option.

WITNESS, our hands, this day of , 19 .

, Party of the First Part.

, Party of the Second Part.

COLORADO.

1239. Oil and Gas Lease.

THIS AGREEMENT, made and entered into this day of , A. D. 19 , by and between , part of the first part, and , part of the second part,

WITNESSETH: That the said part of the first part, for and in consideration of the royalties hereinafter agreed to be paid and of the covenants and agreements hereinafter expressed to be kept and performed by the said part of the second part, ha leased, let and demised and by these presents do

lease, let and demise unto the said part of the second part the following described premises, to wit: [description]

To HAVE AND TO HOLD unto the said part of the second part for the term of years from the date hereof; the said part of the first part hereby giving and granting to the part of the second part the following rights, powers and privileges, to wit, to prospect, bore, drill, mine and develop the said premises for oil and gas; to erect, construct and maintain machinery, tanks, pipe lines, refineries, tramways, cable lines, dwelling-houses and any and all structures which may be necessary or proper to be erected, constructed or maintained for the purpose of prospecting, boring, drilling and developing the said premises as aforesaid, and of storing, using and disposing of oil and gas found or discovered upon the said premises or upon premises in the vicinity thereof.

The said part of the second part covenant and agree as follows, to wit:

First. To pay and deliver as royalty to the said part of the first part per cent. of the net proceeds derived from all oil or gas obtained by virtue of this agreement,

Second. To commence in , county of , state of , within days from the date hereof to drill a well for oil and to continue the work thereon with due diligence until the said well shall have reached the depth of feet, or oil or gas has been discovered,

It is hereby further covenanted and agreed that any and all fixtures, buildings, machinery and improvements of every description erected upon the said land and premises under and by virtue of this lease may be removed within days from and after the termination of this agreement; that the said part of the second part shall have the right to take and use water from any ditch or ditches, stream or streams, spring or springs in and upon the said land and premises, so far as may be necessary for the operation of whatever machinery may be necessary or proper to be used on account of this agreement; that the said land and premises, and any part thereof, may be sublet, and any or all rights existing under and by virtue of this agreement may be assigned or transferred; that the title to any and all oil or gas found or discovered in or upon the said land and premises shall be in the said part of the second part, subject, however, to the payment of the royalty herein reserved to be paid; that if the said part of the second part shall fail in any respect to keep and fulfill any and all agreements herein expressed or implied, then, and in that case it shall be lawful for the said part of the first part, agent or attorney, to declare this lease void and of no effect thereafter, and without process of law to enter upon and take possession of said premises; and that in such case, or at the expiration of this lease by limitation, the said part of the second part shall surrender, yield and deliver to said part of the first part quiet and peaceable possession of said premises in good condition.

In consideration of the premises it is also further agreed by and between the parties hereto that the said part of the second part shall have the right and option to purchase all of the land and premises described herein upon the payment of dollars, as follows, to wit: on or before the day of , A. D. 19 ; a good and sufficient deed conveying all

the right, title and interest of the said part of the first part to be delivered , to the said part of the second part upon the payment of the said consideration.

Each and every grant, promise and covenant herein made by either party hereto is and shall be a grant, promise and covenant of the heirs, administrators, executors, successors and assigns of such party, and any right, privilege or property herein granted to either of the parties hereto shall be a right, privilege and property of the heirs, executors, administrators, successors and assigns of such party.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

1240. Farm Lease.

THIS ARTICLE OF AGREEMENT, made and entered into by and between party of the first part, lessor, and , party of the second part, lessee, WITNESSETH, that the said party of the first part has this day leased unto said party of the second part the following described premises situated in the county of , and state of , to wit: [description] together with all buildings and improvements on the same (except as hereinafter mentioned) for the term of year , commencing on the day of , 19 , and ending the day of , 19 , at the rent of , subject to conditions in fourteenth clause hereof. The said rent to be paid or delivered, as the case may be, as follows: . And the said party of the first part makes the following reservation, to wit: . The said party of the second part, lessee, agrees as follows:

First. To thoroughly plow, cultivate and farm in farm-like manner, all lands upon said premises not in tame or wild grass, or in timber.

Second. That will use said premises as a and for no other purpose whatsoever; that especially will not let said premises or permit the same to be used for any unlawful business or purpose whatsoever.

Third. That will not sell, assign, underlet, or relinquish said premises without the written consent of the said party of the first part (lessor), under the penalty of a forfeiture of all rights under or by virtue of this lease, at the election of said party of the first part.

Fourth. That will guard said property, buildings, gates, fences, vines, shrubbery, and orchard from all damages; that will keep the buildings, glass, gates and fences in as good repair as the same now are, or may be at any time placed in by the said party of the first part (lessor); that will do no act whereby an insurance on buildings may be invalidated; that will not remove nor allow any other person to remove from said premises any of the fences, buildings, trees, shrubbery, or any of the improvements of any kind.

Fifth. That will haul out all manure on said premises, in the summer and fall, and place it where the party of the first part desires. No furrows to be run so as to cause ditches to wash said premises, unless first having

written consent of said party of the first part. That he will clean out and maintain in good repair, during the operation of this lease, all ditches belonging or appertaining to the above described land.

Sixth. That will well and seasonably put in and tend said crops; that will have all small grain threshed by , and corn husked and cribbed by of each year; and if not threshed or cribbed as stated, first party may proceed to do so after ten (10) days' notice to second party, and take enough of second party's grain to pay expense of such gathering or harvesting or threshing; that the tame or wild grass is to be well harvested and taken care of; that no young or growing timber is to be cut or used which is now growing on said premises; that no rails, boards or posts be used or appropriated as fuel or other purposes.

Seventh. That accept the fences upon said leased premises as they now are .

Eighth. That at the expiration of this lease, or upon a breach by the said party of the second part of any of the covenants herein contained will, without further notice of any kind, quit and surrender the possession and occupancy of said premises in as good condition as careful use and natural wear and decay thereof will permit.

Ninth. That all goods and chattels, or any other property used or kept on said premises, shall be held for the rent or damages under this lease, whether exempt from execution or not, meaning or intending hereby to give the party of the first part a valid and first lien upon any and all goods and chattels, crops and other property belonging to said party of the second part.

Tenth. It is further agreed that second party is to work out the road tax for 19 , and send receipts for same to first party.

Eleventh. It is further agreed .

Twelfth. That all payments from party of the second part shall become due and payable upon his forfeiture of said lease, or his abandoning said premises, and if it becomes necessary for the first party to bring an action at law to recover possession, damage or rent, party of the second part agrees to pay a reasonable attorney's fee therefor, and all costs attending the same.

Thirteenth. It is further agreed that in case the land described herein is sold or rented to another tenant for 19 , said tenant or buyer shall have the right to go on said land, make repairs, fall plow, or sow wheat in the fall of 19 .

Fourteenth. It is further understood and agreed that in case first party sell the property described herein before the day of , 19 , it or its assigns may declare this lease void and of no effect, by giving second party notice of said sale before the day of , 19 , and paying second party dollar per acre for all plowing done on said land in the fall of 19 .

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names, and signed a duplicate, this day of , 19

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

1241. Mining Lease.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the first part, and , of the second part, WITNESSETH, that the said part of the first part, for and in consideration of the rents, covenants and agreements hereinafter expressed to be paid, kept and performed by the said part of the second part, ha leased, let and demised, and by these presents do lease, let and demise unto the said part of the second part, the following described premises, situate, lying and being in mining district, in the county of , and state of , to wit: [description]

To HAVE AND TO HOLD THE SAME, for the purpose of mining, with no power to assign this lease or any interest thereunder, or sublet the whole or any part of said premises, for the term of from the date hereof. And the said part of the second part, for and in consideration of the leasing of said premises, ha covenanted and agreed, and by these presents do covenant and agree with said part of the first part, heirs, executors, administrators and assigns, to commence work on said premises , and thereafter to work the same continuously, in a thorough and workmanlike manner, employing at least men underground, working at least shifts to the man each calendar month; and keeping the same securely timbered, drained and clear of loose rock and rubbish; to keep accurate accounts, and to render statements, accompanied by vouchers, to the said part of the first part, agent or attorney, showing the amount of all ore taken from said premises and the yield thereof, and also the cost of hauling and milling the same, and to pay to said part of the first part, agent or attorney, as rental for said premises .

And the said part of the second part furthermore covenant and agree that the said part of the first part, agent or attorney, shall have the right at any and all times to enter upon and descend into any and all parts of said premises, and that the said part of the second part will render to all the assistance in power in so doing. And the said part of the second part furthermore covenant and agree to occupy and hold all side veins, spurs, feeders, cross-lodes, parallel lodes, or mineral deposits of any kind which may be discovered by the said part of the second part or by any person working under in any manner, by working within or from the aforesaid premises, as the property of the said part of the first part and as part of the premises demised, and to not allow any person not in privity with the parties hereto to take or hold possession of said premises or any part thereof under any pretense whatever.

And it is expressly understood and agreed by and between the parties hereto, that this lease shall be void in case of a sale of said premises for a valuable consideration.

And the said part of the second part furthermore covenant and agree that in case fail to commence work on said premises as aforesaid, or to work the same continuously and with reasonable diligence and in workmanlike manner, or to keep the same securely timbered, or render said statements, or to pay said rental as aforesaid, or in any respect to keep and fulfill any and all agreements herein expressed or implied, then, and in that

case it shall be lawful for the said part of the first part, agent or attorney, to declare said term ended, and with or without process of law to enter upon and take possession of said premises, and in such case as well as in case of a sale of said premises as aforesaid, and also at the expiration of this lease by limitation, said part of the second part agree to surrender, yield and deliver to said part of the first part, heirs, executors, administrators or assigns, quiet and peaceable possession of said premises in good condition.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

[Signatures and seals.]

CONNECTICUT.

1242. Lease.

THIS INDENTURE, made by and between , of the first part, and of the second part, WITNESSETH, that the said party of the first part has leased and does hereby lease to the said party of the second part, [description] for the term of from the day of , A. D. 19 , for rent of dollars, payable in payments of dollars each, to wit: on the day of , in each year.

And the said party of the first part covenants with the said party of the second part: that he ha good right to lease said premises in manner aforesaid, and that will suffer and permit said party of the second part (keeping all covenants on part, as hereinafter contained), to occupy, possess and enjoy said premises during the term aforesaid, without hindrance or molestation from or any person claiming by, from or under .

And the said party of the second part covenants with the said party of the first part to hire said premises and to pay the rent therefor as aforesaid, also to pay gas and water rates, that will pay for the removal of all ashes, garbage or rubbish that may have accumulated on said premises, that will commit no waste, nor suffer the same to be committed thereon, nor injure nor misuse the same; and also that will not assign this lease, nor underlet a part or the whole of said leased premises, nor make alterations therein, nor use the same for any purpose but that thereinafore authorized, without written permission from the said party of the first part; but will deliver up the same at the expiration or sooner determination of tenancy, in as good condition as they now are in, ordinary wear, fire and other unavoidable casualties excepted.

PROVIDED, HOWEVER, and it is further agreed, that if the said rent shall remain unpaid days after the same shall become payable as aforesaid, or if the said party of the second part shall assign this lease, or underlet or otherwise dispose of the whole or any part of said demised premises, or use the same for any purpose but that hereinafore authorized, or make any alteration therein without the consent of the party of the first part in writing, or shall commit waste or suffer the same to be committed on said premises, or injure or misuse the same, or shall not perform and fulfill

each and every of the covenants hereinbefore contained to be performed by said party of the second part, then this lease shall thereupon, by virtue of this express stipulation therein, expire and terminate, and the party of the first part may, at any time thereafter, re-enter said premises, and the same have and possess as of former estate, and without such re-entry, may recover possession thereof in the manner prescribed by the statute relating to summary process, it being understood that no demand for the rent, and no re-entry for condition broken, and at common law, shall be necessary to enable the lessor to recover such possession pursuant to said statute relating to summary process, but that all right to any such demand or any such re-entry is hereby expressly waived by the said party of the second part.

And it is further agreed between the parties hereto, that whenever this lease shall terminate, either by lapse of time or by virtue of any of the express stipulations therein, the said lessee hereby waives all right to any notice to quit possession, as prescribed by the statute relating to summary process.

And it is further agreed, that in case the said party of the second part shall with the written consent of said party of the first part indorsed hereon, or on the duplicate hereof, at any time hold over the said premises beyond the period above specified as the termination of this lease, then said party of the second part shall hold said premises upon the same terms and under the same stipulations and agreements as are in this instrument contained, and no holding over by said party of the second part shall operate to renew this lease without such written consent of said party of the first part.

And it is further agreed between the parties hereto that the lessee is to comply with and conform to all the laws of the state of Connecticut, and the by-laws, rules and regulations of the city and town within which the premises hereby leased are situated — relating to health, nuisance, fire, highways and sidewalks — so far as the premises hereby leased are or may be concerned; and to save the lessor harmless from all fines, penalties and costs for violations of or non-compliance with the same, said premises shall be at all times open to the inspection of said lessor agents to applicants for purchase or lease and for necessary repairs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and to a duplicate of the same tenor and date, this day of ,
A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

For and in consideration of the letting of the premises above described and for value received, I guarantee the punctual payment of the rent and performance of the covenants in the above agreement mentioned to be paid and performed by said lessee, without requiring any notice of non-payment or non-performance, or proof of notice or demand being made, whereby to charge me therefor.

Dated at , this day of , 19 .

DISTRICT OF COLUMBIA.

(Code of Law, p. 157.)

1243. Lease Statutory Form.

This lease, made this of , in the year , between
of , and of , witnesseth that the said doth lease
unto the said , his executor, administrator, and assigns, all that [*here
describe the property*] for the term of years, beginning on the
day of , in the year , and ending on the day of , in
the year , the said , agrees to pay the sum of on the
day of in each and every year [or month, as the case may be].

WITNESS our hands and seals.

, [SEAL.]

, [SEAL.]

Code of Law of 1910, p. 157, Chap. XVI., subchapter V.—at end of Chap.
XVI.; after § 556; before § 557 (first section of chapter XVII).

1244. Lease.

THIS AGREEMENT, made this day of , A. D. 19 , by and between
of , party of the first part, and of , party of the sec-
ond part, hereinafter described as lessor and lessee, respectively.

WITNESSETH, that the said lessor, for and in consideration of the sum of
dollars (\$) rent, and also the covenants, conditions, and agree-
ments herein contained, and on the part of the lessee to be paid, kept, and
performed, and for no other consideration except as herein expressed, does
hereby let and rent to the said lessee and he ha hereby taken as tenant
of the lessor the following described premises, situate, lying, and being
in the and known and designated as and being [*description*] for the term
of , to commence with the day of , A. D. 19 , and to end on
the day of , A. D. 19 , at the said rent of dollars (\$),
payable without demand at in monthly installments of dollars in
advance on the day of each and every month during said term, beginning
for the first of said payments on the day of , 19 , the receipt of
one dollar (\$1) of said rent paid by said lessee is hereby acknowledged by
said lessor.

And the said lessee covenants and agrees to pay said lessor the said rent
as aforesaid for the full term hereof; that will not assign this lease or
any portion of the term, or sublet the premises or any part thereof, without
the written consent of the lessor; that said lessee will not use or suffer to be
used said premises for any disorderly or unlawful purpose, or for any other
purpose than ; that he will not suffer or commit any waste to, in, or
upon the said buildings, fixtures, and premises; that will at own
expense during said term keep said leased premises, including the building ,
fixtures, plumbing, and appurtenances thereof in substantial condition and in

good repair, clean, and in good working order and proper sanitary condition, remove snow and ice from the sidewalks thereof, and the lessor or said premises, and the said lessee has no authority to incur any debt or make any charge against the lessor or assigns or create any lien upon said leased property for any work or materials furnished the same.

And the lessee agrees that will at the end of tenancy surrender the said leased premises in such substantial condition and repair, good working order, etc., and clean, ordinary wear and tear and loss by fire and storm excepted; that will pay all charges for gas, electricity, and water used on said premises when the bills therefor become due and payable; that will not make any alterations or changes in said premises, without written consent, or increase the rate of fire insurance upon the building and improvements upon said premises beyond an ordinary risk.

It is further agreed that payment of rent shall cease if the said premises shall be destroyed by fire, or be so damaged by fire or any unavoidable casualty as to make the same uninhabitable.

Provided always, that if the rent aforesaid, or any installment thereof, shall not be paid within days after the same becomes due and payable as aforesaid, although no demand shall have been made for the same; or if the lessee or assigns shall fail or neglect to keep and perform each and every of the covenants, conditions, and agreements herein contained and on the part of the said lessee to be kept and performed, or if the same or any of them shall be broken, then and in each and every such case from thenceforth and at all times thereafter, at the option of the lessor or his assigns, the lessee's right of possession shall thereupon end and determine, and the lessor or his assigns shall be entitled to the possession of said leased premises, and to re-enter the same without demand of rent or demand of possession of the said premises, and may forthwith proceed to recover possession of the said leased premises by process of law, any notice to quit or of intention to re-enter the same being hereby expressly waived by the lessee and assigns.

And in the event of such re-entry by process of law, the lessee nevertheless agrees to remain answerable for any and all damages, deficiency or loss of rent which the lessor may sustain by such re-entry; and the lessor reserves full power, which is hereby acceded to by the lessee, to re-let the said premises for the benefit of the lessee.

And the lessee expressly covenants and agrees to pay said rent as aforesaid, and also keep and perform each and every of the covenants, conditions, and agreements herein contained.

It is mutually agreed that this lease shall bind the executors, administrators, and assigns of the respective parties hereto.

And it is further agreed, that no waiver of any breach of any covenant, condition, or agreement herein shall operate as a waiver of the covenant, condition, or agreement itself, or any subsequent breach thereof.

IN TESTIMONY WHEREOF, the said parties have hereunto signed their names and affixed their seals the day and the year first hereinbefore written.

[Signatures and seals.]

WITNESS:

[Signature.]

1245. Lease — Short Term.

THIS LEASE, made by and between _____, part of the first part, and _____, part of the second part,

WITNESSETH, that the part of the first part do hereby grant and demise to the part of the second part [*description*] for the term of _____, commencing on the _____ day of _____, 19____, for the sum of _____ dollars per annum, payable in monthly installments of _____ dollars, in advance, at _____, Washington, D. C., the first payment to be made on the _____ day of _____, 19____, and a like sum on the _____ day of each and every month thereafter.

And the said part of the second part covenant that he will not sublet the said premises without the consent in writing of said part of the first part; that he will not use said premises for any unlawful purposes; that he will pay the said rent as above stated, and all bills for gas used on the premises, making the necessary deposit at the gas office to secure same; that he will pay all water rents for said premises during _____ tenancy thereof; that all repairs rendered necessary by the negligence of the part of the second part shall be paid for by _____, and that he will surrender the same at the expiration of _____ tenancy in good order, ordinary wear and tear and damage by the act of God or public enemy excepted.

AND IT IS FURTHER AGREED, that if any installment of the rent hereinbefore reserved be not paid at the time agreed upon, although no demand shall have been made for the same; or if any of the covenants herein contained be not performed according to their full tenor and effect, then it shall be lawful for the said part of the first part to terminate this tenancy by a notice in writing of _____ days to that effect, which notice may be served on the part of the second part in person, or by leaving the same on the premises; and upon the expiration of the said _____ days, the tenancy created by this lease shall forever cease and determine, and the said part of the first part may re-enter on the said premises and repossess the same, and avail himself of the remedies provided by the code of law regulating proceedings between landlord and tenant, without further notice, all other notice in such case being hereby expressly waived.

AND IT IS FURTHER AGREED, that no waiver of one breach of any covenant herein shall be construed to be a waiver of the covenant itself, or of any subsequent breach thereof.

IN TESTIMONY WHEREOF, the said parties have hereunto signed their names and affixed their seals, this _____ day of _____, A. D. 19____.

[*Signatures and seals.*]

Witnessed by

[*Signatures.*]

FLORIDA.

1246. Lease.

THIS INDENTURE, made this _____ day of _____, A. D. 19____, between _____ of the one part, and _____, of the other part, WITNESSETH, that the said _____ do by these presents lease and let unto the said _____ [*description of premises*]

To HAVE AND TO HOLD the premises aforesaid unto the said lessee _____ from the _____ day of _____, 19____, for the term of _____ then next ensuing,

yielding and paying for the same unto said lessor , heirs and assigns, the rent or sum of .

IT IS AGREED between the parties hereto that should this rent at any time remain unpaid for five days after the same shall be due and payable, the said lessor may, at option, then consider said lessee as tenant at will, and re-enter upon and repossess of the said premises. And should the said lessee at any time permit the said rent to be in arrears and unpaid for five days after the same shall be due and payable, then the said lessee covenant and agree that in case of such default the entire rent for the term for which said premises are leased shall at once become due and payable, and may be recovered forthwith by distress or otherwise; and in all proceedings under this lease for recovery of rent in arrears, whether by distress or other action at law, the said lessee for heirs, executors and administrators, hereby waive the benefit of all the exemption laws, any law to the contrary notwithstanding. AND IT IS FURTHER AGREED that should the property of the lessee be removed from the aforesaid premises, the lessor hereby authorized, at any time within ninety days thereafter, to enter upon the same wherever found, and to seize and to sell so much thereof as will fully satisfy the said lessor , for all arrears of rents then due or to become due, as above provided, and the cost thereon; and in the sale the said lessor to have the rights and privileges granted under this lease, especially that waiving the benefits of the exemption laws, so much so as if no removal of the lessee's property had been made.

It is also expressly understood that the said premises shall not be underlet or rented without the lessor's written consent to the transfer of this lease or such underletting. On the expiration of this lease, the property is to be given up in as good order in all respects as it now is, reasonable wear and tear and damage from fire excepted.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals. [Signatures and seals.]

Attest: [Signatures.]

FOR A VALUABLE CONSIDERATION, I hereby become security for the payment of the above rent as often as the same shall become due.

WITNESS my hand and seal the day and year above mentioned. [Signature and seal.]

Attest: [Signature.]

1247. Turpentine Lease.

STATE OF FLORIDA, }
County of , }

THIS INDENTURE, made this day of , between , of the county of and state of , of the first part, and , of the county of and state of , of the second part, WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid at or before the sealing and delivery of these presents,

the receipt whereof is hereby acknowledged, ha granted, bargained, leased and conveyed, and do by these presents, grant, bargain, lease and convey unto the said part of the second part, heirs and assigns, at the rate of , all of the timber upon the following described tract of land for the purpose of boxing, working and otherwise using said timber for turpentine purposes: [*description*]

To HAVE AND TO HOLD, box, work and otherwise use said timber for turpentine purposes unto the said part of the second part, heirs and assigns.* And it is hereby expressly covenanted and agreed that the said part of the second part may commence boxing, working or otherwise using the said timber for turpentine purposes, or any portion thereof, at any time that the said part of the second part may desire, and shall have the right to continue to box, work or otherwise use the said timber, and every portion thereof, for the full term of years, beginning, with reference to each portion of the timber, from the time only that the boxing and working of each portion is commenced, it being the intention of the parties that this lease shall continue to operate until all of the timber, and each and every part thereof, has been boxed, worked and otherwise used for turpentine purposes for the full period of years. And it hereby further covenanted and agreed that the said part of the second part, heirs and assigns, shall have the free and unrestricted right to enter upon, occupy and use the said land for the purposes of boxing, working and otherwise using the timber thereon for turpentine purposes as aforesaid during the continuance of this lease. And it is further covenanted and agreed that said part of the second part may have the right at any time to assign this lease in whole or in part, and that any assignee of this lease shall have the same right of assignment, and that all the rights and privileges of said part of the second part shall vest in whomsoever may succeed to the interest hereby conveyed to said part of the second part. And the said part of the first part, for heirs, executors and administrators, the said granted and leased timber, with the right to box, work and otherwise use the same for turpentine purposes, unto the said part of the second part, heirs and assigns, will forever warrant and defend.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in the presence of

[*Signatures.*]

1248. Turpentine Lease — Herty System.

[*As in preceding form to the *, continuing thus*]: And it is hereby expressly covenanted and agreed that the said part of the second part may commence working or otherwise using the said timber for turpentine purposes, or any portion thereof, at any time that the said part of the second part may desire, and shall have the right to continue to work or otherwise use the said timber, and every portion thereof, for the full term of years, beginning, with reference to each portion of the timber, from the time

only that the working of each portion is commenced, it being the intention of the parties that this lease shall continue to operate until all of the timber, and each and every part thereof, has been worked and otherwise used for turpentine purposes for the full period of years. And it is hereby further covenanted and agreed that the said part of the second part, heirs and assigns, shall have the free and unrestricted right to enter upon, occupy and use the said land for the purposes of working and otherwise using the timber thereon for turpentine purposes as aforesaid during the continuance of this lease. And it is further covenanted and agreed that said part of the second part may have the right at any time to assign this lease in whole or in part, and that any assignee of this lease shall have the same right of assignment, and that all the rights and privileges of said part of the second part shall vest in whomsoever may succeed to the interest hereby conveyed to said part of the second part. It is distinctly understood and agreed by the parties hereto that the trees upon the said land are not to be boxed, but that the turpentine is to be extracted or taken therefrom by means of the Herty cup and gutter iron, according to what is known as the Herty system; and that at the expiration of this lease the party of the second part shall have the right to remove and take away the Herty cups and gutter irons belonging to him used in extracting the turpentine aforesaid. And the said part of the first part, for heirs, executors and administrators, the said granted and leased timber, with the right to work and otherwise use the same for turpentine purposes, unto the said part of the second part, heirs and assigns, will forever warrant and defend.

IN WITNESS WHEREOF, etc.

ILLINOIS.

1249. Lease — Chicago Real Estate and Renting Agents' Association.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , party of the first part, and , party of the second part,

WITNESSETH, that the party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, ha demised and leased to the party of the second part, the premises in the of , county of , and state of Illinois, known and described as follows: [*description*] to be occupied for and for no other purpose whatever.

TO HAVE AND TO HOLD the same, unto the party of the second part, from the day of , A. D. 19 , until the day of , A. D. 19 . And the party of the second part in consideration of said demise, do covenant and agree with the party of the first part as follows:

First. To pay as rent for said demised premises the sum of dollars, payable in installments of dollars, each in advance, upon the first day of each and every month of said term, at the .

Second. That he ha examined and know the condition of said premises and ha received the same in good order and repair, except as hereon otherwise specified, and that no representations as to the condition or repair

thereof, have been made by the party of the first part or the agent of said party, prior to, or at the execution of this lease, that are not herein expressed or indorsed hereon: and that he will keep said premises and appurtenances in good repair, replacing all broken glass with glass of the same size and quality as that broken, and will keep said premises, and appurtenances, including catch basins, vaults and adjoining alleys, in a clean and healthy condition, according to the city ordinances, and the direction of the proper public officers, during the term of this lease, at own expense; and will, without injury to the roof, remove the snow and ice from the same when necessary, and clean the snow and ice from the sidewalks in front of said premises; and upon the termination of this lease, in any way, will yield up said premises to said party of the first part in good condition and repair, (loss by fire and ordinary wear excepted), and deliver the keys at the .

Third. That the party of the first part shall not be liable for any damage occasioned by failure to keep said premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting, leaking or running of any cistern, tank, wash-stand, water closet or waste pipe in, above, upon or about said building or premises, nor for damage occasioned by water, snow or ice being upon or coming through the roof, skylight, trap door or otherwise, nor for any damages arising from acts or neglect of co-tenants or other occupants of the same building, or of any owners or occupants of adjacent or contiguous property. And the said first party shall have the right to enter said premises at any and all times, by himself or his employees, for the purpose of making any alterations, additions and improvements he may deem desirable, and the second party shall not be entitled to or claim from the party of the first part any damages or rebate resulting from the making of any alterations, additions or enlargements to said building. It is hereby agreed that the party of the first part shall not be held liable to the party of the second part for any loss or damage caused by the city of Chicago failing to provide adequate water, drainage or sewerage service, and that this lease is made subject thereto. It is hereby expressly agreed, by and between the parties hereto, that the party of the first part shall not be liable for any damage for injury or inconvenience caused by the impairment or cessation of the heating, water, light, or janitor service, growing out of or caused by any strike or strikes, labor troubles, unavoidable accident, or unusual or extraordinary condition of the coal market.

Fourth. That he will not allow said premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, nor to be occupied, in whole or in part, by any other person, and will not sublet the same, nor any part thereof, nor assign this lease, without in each case the written consent of the party of the first part first had, and will not permit any transfer, by operation of law, of the interest in said premises acquired through this lease; and will not permit said premises to be used for any unlawful purpose or purposes that will injure the reputation of the same or of the building of which they are a part, or disturb the tenants of such building or the neighborhood;

and will not permit the same to remain vacant or unoccupied for more than ten consecutive days; and will not permit any alteration of or upon any part of said demised premises, nor allow any signs or placards posted or placed thereon, except by written consent of first party; all alterations and additions to said premises shall remain for the benefit of the lessor unless otherwise provided in said consent as aforesaid.

Fifth. To pay (in addition to the rents above specified) all water rents and gas bills taxed, levied or charged on said demised premises, for and during the time for which this lease is granted, and in case no water rents are levied specifically upon said premises to pay the part of all water rents levied or charged upon the building in which said demised premises are situate; and in case said water rates and gas bills shall not be paid when due, said party of the first part shall have the right to pay the same, which amounts so paid, together with any sums paid by said party of the first part, to keep said premises and their appurtenances in a clean and healthy condition, as hereinbefore specified, are hereby declared to be so much additional indebtedness of the said party of the second part to the said party of the first part, and shall be due and payable with the next installment of rent due thereafter under this lease.

Sixth. To allow the party of the first part free access to the premises hereby leased for the purpose of examining or exhibiting the same, or to make any needful repairs or alterations in said premises, which said first party may see fit to make; also to allow to have placed upon said premises, at all times, notice of "For Sale" and "To Rent," and will not interfere with the same.

Seventh. If said party of the second part shall abandon or vacate said premises, the same shall be re-let by the party of the first part for such rent, and upon such terms as said first party may see fit; and if a sufficient sum shall not be thus realized, after paying the expenses of such re-letting and collecting, to satisfy the rent hereby reserved, the party of the second part agrees to satisfy and pay all deficiency.

Eighth. At the termination of this lease, by lapse of time or otherwise, to yield up immediate possession to said party of the first part, and failing so to do, to pay as liquidated damages, for the whole time such possession is withheld, the sum of dollars per day; but the provisions of this clause shall not be held as a waiver by said first party of any right of re-entry as hereinafter set forth; nor shall the receipt of said rent or any part thereof, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to forfeit this lease and the term hereby granted for the period still unexpired, for any breach of any of the covenants herein.

Ninth. It is further covenanted and agreed, by said party of the second part, that there shall not be kept or used on said premises, naphtha, benzine, benzole, gasoline, benzine-varnish, or any product, in whole or in part, of either, or gunpowder, fireworks, nitro glycerine, phosphorus, saltpetre, nitrate of soda, camphene, spirit-gas, or any burning fluid or chemical oils, without the written permission of the party of the first part; and the generating or evaporating or using on said premises or contiguous thereto, of gasoline,

benzine, naphtha, or any other substance for a burning gas or vapor for lighting, other than the ordinary street gas or kerosene of lawful fire test, is absolutely prohibited unless permitted in writing hereon.

IT IS FURTHER COVENANTED AND AGREED, by said party of the second part, that said party will not permit any person to occupy any part of the premises above described, who is reputed to be of immoral character, or permit any person or persons to sing, dance, use any musical instrument after 11 o'clock at night, or do or permit anything to be done which can in any wise molest or annoy other tenants in the premises, or prevent other tenants from having their nightly rest, or which in any wise may injure the good reputation of the above described premises. And in case said party of the second part shall violate said covenant or agreement, said party of the first part, or his representatives, shall have the right and power and is hereby authorized by said party of the second part so to do, to at once declare said lease ended without notice to said party of the second part, and with all necessary force to repossess himself of the premises demised as above stated, and expel, oust and remove all parties who may occupy any part of said premises and any and all goods and chattels that may be therein contained, and said party of the first part shall not be liable for any damage or damages that may be occasioned to either person or persons by reason of such removal, expulsion or ousting; nor for any damage or damages to or loss of any goods or chattels belonging to any party occupying said premises or any part thereof by any cause whatsoever by reason of such removal or ousting from the premises aforesaid or the building in which they are situated. And the said party of the second part hereby agrees, acknowledges and covenants, with the said party of the first part, that said party of the second part has examined the gas range located in the above named premises and finds the same in perfect condition, and will keep the same in such condition at own expense, and will not permit any person to use the same who is not familiar with the use of gas ranges, and will pay to said party of the first part any and all damages that may be occasioned by the careless use of said range, whether caused by the negligence of said party of the second part or any of employees and persons living with said party; and will also keep said party of the first part harmless from any and all suits that may be brought against him by any person or persons by reason of the negligent or careless use of said gas range.

Said party of the second part hereby agrees to provide all garbage cans and ash cans required by the ordinances of the city of Chicago.

Said party of the second part in consideration of said demise and one dollar in hand paid him this day, hereby agrees to assume and does hereby assume all risk of and liability for damages to person or property and damages of any and all kinds arising from present and future defective conditions of said premises, both latent and manifest, and to save said party of the first part harmless therefrom during the period of this lease and all extensions of same, and hereby releases said party of the first part therefrom.

IT IS EXPRESSLY AGREED, between the parties hereto, that if default be made in the payment of the rent above reserved or any part thereof, or in any of the covenants and agreements herein contained, to be kept by the party of

the second part, it shall be lawful for the party of the first part or the legal representatives of said party, at any time thereafter, at the election of said first party, or the legal representatives thereof, without notice, to declare said term ended, and to re-enter said demised premises or any part thereof, either with or without process of law, and the said party of the second part or any person or persons occupying the same, to expel, remove and put out, using such force as may be necessary so to do, and the said premises again to repossess and enjoy, as before this demise, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenants, and said party of the second part further covenants and agrees, that said party of the first part, or the representatives or assigns of said party, shall have, at all times, the right to distrain for rent due, and shall have a valid and first lien upon all property of said party of the second part, which now has or owns or may hereafter acquire or have an interest in, whether exempt by law or not, as security for the payment of the rent herein reserved.

IT IS FURTHER EXPRESSLY AGREED, between the parties hereto that if default be made in the payment of the rent above reserved, or any installment or any part thereof or any part of the indebtedness as herein provided, thereupon, and from time to time as often as any such default shall be made, it shall be lawful for, and the party of the second part hereby irrevocably authorizes any attorney of any court of record to appear in the name, place and stead of said party of the second part in any court of record in any of the states or territories of the United States in term time or vacation; to waive the service of process or processes, and in writing to waive the right of trial by jury, and from time to time to confess judgment or judgments in favor of the said party of the first part, his heirs, executors, administrators or assigns and against the said party of the second part for the amount of rent and indebtedness due and in default as aforesaid, with interest thereon at the rate of seven (7) per cent. per annum to the day of the entry of said judgment or judgments, together with the costs of such proceeding or proceedings, and twenty (\$20) dollars attorney's fees each and every time a judgment shall be entered for rent due under this lease for plaintiff's attorney's fees; also to file a cognovit or cognovits for the said amount or amounts with an agreement or agreements therein waiving and releasing all errors that may intervene in any such proceeding or proceedings, consenting to immediate execution or executions upon such judgment or judgments, and stipulating that no writ of error or appeal shall be prosecuted on the judgment or judgments entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment or judgments.

And said party of the second part hereby ratifies and confirms all that the said attorney may lawfully do by virtue hereof.

IT IS FURTHER AGREED, by the parties hereto, that after the service of notice, or the commencement of a suit, or after final judgment for possession of said premises, the first party may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, said suit, or said judgment.

In case said premises shall be rendered untenable by fire or other casualty, the lessor may, at his option, terminate this lease, or repair said premises within thirty days, and failing so to do, or upon the destruction of said premises by fire, the term hereby created shall cease and determine.

The party of the second part further covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the party of the first part in enforcing the covenants and agreements of this lease; and all the parties to this lease agree that the covenants and agreements herein contained shall be binding upon, apply and inure to their respective heirs, executors, administrators and assigns.

WITNESS the hands and seals of the parties hereto, the day and year first above written.

[Signatures and seals.]

In presence of

[Signatures.]

GUARANTEE.

For value received hereby guarantee the payment of the rent and the performance of the covenants by the party of the second part in the within lease covenanted and agreed, in manner and form as in said lease provided.

WITNESS hand and seal this day of , A. D. 19 .

[Signatures and seals.]

ASSIGNMENT AND ACCEPTANCE.

For value received hereby assign all right, title and interest in and to the within lease unto , heirs and assigns, and in consideration of the consent to this assignment by the lessor guarantee the performance by said of all the covenants on the part of the second party in said lease mentioned.

In consideration of the above assignment and the written consent of the party of the first part thereto, hereby assume and agree to make all the payments and perform all the covenants and conditions of the within lease, by said party of the second part to be made and performed.

WITNESS hand and seal this day of , A. D. 19 .

[Signatures and seals.]

CONSENT TO ASSIGNMENT.

hereby consent to the assignment of the within lease to on the express condition, however, that the assignor shall remain liable for the prompt payment of the rent and performance of the covenants on the part of the second party as therein mentioned, and that no further assignment of said lease or subletting of the premises or any part thereof shall be made without written assent first had thereto.

WITNESS hand and seal this day of , A. D. 19 .

[Signatures and seals.]

LESSOR'S ASSIGNMENT.

In consideration of one dollar, to _____ in hand paid, _____ hereby transfer, assign and set over to _____ and assigns _____ interest in the within lease, and the rent thereby secured _____.

WITNESS _____ hand and seal, this _____ day of _____, A. D. 19 ____ .
 [Signatures and seals.]

1250. Lease — With Steam Power.

THIS INDENTURE, made this _____ day of _____, A. D. 19 ____, between _____, party of the first part, and _____, party of the second part, WITNESSETH, that the party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, has demised and leased to the party of the second part, the premises in the city of _____, county of _____, and state of _____, known and described as follows, to wit: [description]

TO HAVE AND TO HOLD the same unto the party of the second part, from the _____ day of _____, A. D. 19 ____, until the _____ day of _____, A. D. 19 ____, to use the said demised premises for the business of the party of the second part, of _____, and the party of the first part agrees to furnish to the party of the second part, all the steam power needed by the party of the second part, not exceeding _____ horse power; the said power shall be furnished for _____ hours and _____ minutes each working day, except on Saturdays, on which day said power shall be furnished for _____ hours and _____ minutes. Sundays, Christmas, January First, July Fourth and Thanksgiving day are not to be considered as working days. The said power is to be furnished from pulley _____. And said power is to be measured when all the machinery of the party of the second part is in operation. During the hours and minutes power is agreed to be furnished, the party of the first part also agrees to furnish the party of the second part the use of the elevator in the building containing said demised premises, as the said business of the party of the second part shall require.

The party of the first part allows and assures to the party of the second part ingress from _____ street, to said demised premises, and egress therefrom to said last mentioned street, during the term of this lease.

The party of the first part also agrees to furnish to the party of the second part steam heat by means of steam coils, put in place and kept in repair by the party of the first part, and to maintain such heat at a reasonable and customary degree of temperature, during the times said power shall be furnished and used as hereinbefore provided.

The party of the first part also agrees to provide a water pipe and faucet, a sink and a water closet, in the said demised premises, and to maintain and supply a head of water to operate the same.

The party of the second part covenants and agrees to pay to the party of the first part as rent for the said demised premises and power (exclusive of the amount agreed to be paid for extra power and power over time, as hereinafter provided), the sum of _____ dollars, in monthly installments of _____ dollars each, payable in advance, on the first day of each calendar month during said term.

The party of the second part also covenants and agrees that he has examined and know the condition of said premises, and has received said premises in good order and repair, and will keep the same in a clean and neat condition, and will repair all damage to said premises or the shafting and machinery conveying said power occasioned by the fault or negligence of the party of the second part; and will keep properly oiled, all the shafting of the party of the first part in said demised premises; and will not allow said demised premises to be used for any purpose that will increase the rate of insurance upon the building containing the same, or increase the danger from fire to said building, nor for any purpose other than that hereinbefore specified, nor to be occupied in whole or in part by any other person, and will not sublet the same, nor any part thereof, nor assign this lease, without in each case the written consent of the party of the first part had; and will not permit any transfer by operation of law of the interest in said premises acquired through this lease; and will not permit said premises to be used for any unlawful purpose, or purpose that will injure the reputation of the same, or of the building of which they are a part, or disturb the other tenants of said building; and will not make any alterations upon said demised premises, without the written consent of the party of the first part; and upon the termination of this lease in any way, will restore said demised premises to the party of the first part in as good condition as when entered upon by the party of the second part; less occasioned by the burning of the building containing said premises and ordinary wear excepted; and that all alterations or additions to said premises made by the party of the second part, shall remain for the benefit of the party of the first part, unless otherwise stipulated in said consent hereinbefore provided to be obtained before making such alteration or addition.

IT IS COVENANTED AND AGREED between the parties hereto, that the party of the first part shall keep the shafting, appliances and machinery in said demised premises hereby rented to the party of the second part, in good repair during the term of this lease, excepting repairs necessitated by injuries thereto occasioned by the fault, negligence or misconduct of the party of the second part, which repairs the party of the second part covenants and agrees to make; and that the party of the first part shall be allowed an aggregate of fifty working hours in each year for necessary stoppages for repairs of machinery conveying power; and if in any year repairs shall be necessitated, without the fault of the party of the second part, requiring stoppages of said machinery for more than fifty hours in the aggregate, the party of the second part shall be allowed to retain, in full payment for all damages occasioned by such stoppages, a part of the yearly rent hereinbefore agreed to be paid, proportionate to the excess of such stoppages, over fifty hours, compared with the working hours in the year; and the balance of the rent hereinbefore agreed to be paid shall be received by the party of the first part, in full payment of the rent for such year. The said party of the first part shall also furnish to the party of the second part, additional power over and above the amount of horse power hereinbefore stipulated and contracted for, in case the party of the second part shall need and demand the same, or shall use additional power above the horse power hereinbefore stipulated

and contracted for, whether such additional power shall have been demanded or not, in either case the party of the second part shall pay for such additional power at the rate of dollars per month for each horse power, which shall be considered and paid as additional rent to the rent hereinbefore reserved.

The party of the first part shall also furnish steam power to the party of the second part, at such other times during said term, besides during the working hours and times hereinbefore stipulated and contracted for, as shall be needed or used by the party of the second part, who shall pay for the same at the rate of per hour, for all extra or over time during which the same shall have been used, which shall be considered and paid for as extra rent in addition to the rent hereinbefore reserved; and the party of the second part shall give due notice when he shall want any power for extra or over time.

The party of the first part shall also have the privilege of putting iron doors or shutters at any or all of the windows or doors of the said demised premises, at any time during the term of this lease, and the party of the second part covenants and agrees to close and keep closed, all doors and shutters that may be so placed, except during working hours.

The party of the first part, agents and employees, shall be allowed to enter and be upon said demised premises at any and all reasonable times, for the purpose of examining, making connections with and repairing whatever shafting or machinery belonging to the party of the first part may be in said demised premises, and for the purpose of ascertaining what power the party of the second part may be using, and for such other purposes as the party of the first part, agents or employees, may desire, not inconsistent with the purposes and objects of this lease.

The party of the second part agrees to pay in addition to any money herein elsewhere agreed to be paid, for any damage to the building containing said demised premises, or to the property of any other tenant in said building, caused by any overflow of water from the faucet, sink or water closet in said demised premises.

IT IS EXPRESSLY AGREED between the parties hereto, that if the party of the second part shall abandon or vacate said premises, or if by reason of the failure of said second party to perform any of the covenants herein agreed to be performed by said second party, said first party shall have taken possession of said demised premises, by a proceeding at law in forcible detainer, or in any other manner, then, if thought advisable by the party of the first part, said first party shall have full power and authority to relet the said demised premises, and if a sufficient sum shall not be thus realized, after paying the expenses of such reletting and collecting, to satisfy the rent hereby reserved, and pay and discharge all sums of money that may be due or owing to the party of the first part, under or by reason of the breach of any provision of this lease, the party of the second part shall pay and satisfy all deficiency.

AND IT IS FURTHER EXPRESSLY AGREED between the parties hereto, that if default be made in the payment of the rent above reserved, or any installment or any part thereof, as herein provided, thereupon and from time to

time as often as any such default shall be made, it shall be lawful for, and the party of the second part hereby authorizes, any attorney of any court of record to appear in the name, place and stead of said party of the second part in any court of record in term time or in vacation, to waive the service of process or processes, and in writing to waive his right to a trial by jury, and to confess a judgment or judgments in favor of the said party of the first part, his heirs, executors, administrators or assigns, and against the said party of the second part for the amount of rent due and in default as aforesaid, with lawful interest thereon to the day of the entry of such judgment or judgments, together with the costs of such proceeding or proceedings, and twenty-five dollars attorney's fees each, and every time a judgment shall be entered for rent due under this lease for plaintiff's attorney's fees; also to file a cognovit or cognovits for the said amount or amounts with an agreement or agreements therein waiving and releasing all errors which may intervene in any such proceeding or proceedings, and consenting to immediate execution or executions upon such judgment or judgments. And said party of the second part hereby ratifies and confirms all that the said attorney may lawfully do by virtue hereof.

IT IS FURTHER AGREED by the parties hereto, that after the service of notice, or the commencement of a suit, or after final judgment for possession of said premises, the first party may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, said suit, or said judgment.

The party of the second part further covenants and agrees that he will pay and discharge all reasonable costs, attorneys' fees and expenses that shall be made and incurred by the party of the first part in enforcing the covenants and agreements of this lease; and all the parties to this lease agree that the covenants and agreements herein contained shall be binding upon their respective heirs, executors, administrators and assigns.

In case said premises shall be rendered untenable by fire or other casualty, the party of the first part may, at option, terminate this lease, or repair said premises within thirty days, and failing to do so, or upon the destruction of the building containing said premises by fire, the term hereby created shall cease and determine.

WITNESS the hands and seals of the parties hereto, the day and year first above written.

[Signatures and seals.]

1251. Farm Lease.

THIS INDENTURE, made this day of , A. D. 19 , between , part of the first part and landlord , and part of the second part and tenant , WITNESSETH, that the part of the first part, in consideration of the rents, agreements and covenants hereinafter contained, to be paid, delivered, kept and performed by said tenant , executors, administrators and assigns, by these presents ha demised and to farm let, unto said tenant , executors and administrators, the following lands and premises, situate in the county of , and state of Illinois, to wit: [description] excepting and reserving the right of ingress, egress and regress, to the part of the first part, heirs and assigns, at any and all times, and excepting

the timber and fruit trees and shrubbery growing thereon, and reserving the right to set and plant on any part of said premises fruit or ornamental trees, hedges and shrubbery, and to make such improvements thereon as said landlord, heirs or assigns may desire. To have and to hold said demised premises, with all the appurtenances, except as above reserved, unto said tenant, executors and administrators, from the day of , A. D. 19 , to the day of , A. D. 19 .

And the said tenant for executors, administrators and assigns, in consideration of such leasing covenant and agree to and with said landlord, heirs and assigns, in manner and form following, that is to say:

1. Not to underlet said premises, or any part thereof, nor to assign said lease or term, without the written permission of said landlord, heirs or assigns.

2. Not at any time to do or commit, or suffer to be done, any willful or voluntary waste, spoil or destruction in or upon said premises, or any part thereof, nor of any crops or products of said premises, before said landlord shall have received full rent or share thereof, nor of any crops, rent or share of said landlord left on said premises.

3. Not to sell, encumber, market or remove, or cause or suffer to be removed from said premises, any kind of grain, crop or product of said premises, until after said landlord shall first have received and accepted just and full share thereof, as hereinafter provided, nor to pasture the corn-stalks or any of said premises at any time, without the written permission of said landlord first had and obtained.

4. To plow, sow, plant, cultivate and attend said land, not in meadow, in proper season, and in good and farm-like manner, and in due and regular course of husbandry; to care for and preserve the crops while standing or growing; to cut, gather, harvest, put up and preserve the several crops and productions in their order and in good season; to preserve and keep the fruit and ornamental trees, vines and shrubbery, that now are or shall be planted on the premises, from injury by plowing, or from cattle, horses, sheep or otherwise.

5. To scatter and expend upon said premises all the manure and compost, suitable to be used; such manure as is unfit for use to leave upon said premises for future use thereon; and not to burn any stalks or straw or stubble on said premises.

6. To deliver to said landlord of all the hay and other grasses grown upon said premises, and of all the straw .

7. To deliver to said landlord as rent of all the wheat, rye, oats and other small grain, properly threshed and cleaned, ready for market, at , on or before the day of , A. D. 19 , the same to be measured and divided, after it is threshed and cleaned, and of all the corn and other produce grown and raised upon said premises; the corn to be well husked, and delivered before said tenant gather own portion thereof, or any part of portion, and on or before the day of , A. D. 19 , at . Or should said tenant prefer, the whole of said corn grown and raised shall all be gathered and husked, and then be divided by weight or measurement.

8. To keep said premises, including the hedges and fences, in proper and necessary repair, provided that, if necessary, the landlord shall furnish such materials as may be needful to repair the fences within a reasonable time of being notified of its want.

9. To deliver up said premises at the end of said term, or upon its determination by said landlord for the breach or non-performance of any of the covenants and agreements herein made, in as good order as when received, ordinary wear and decay by use and time, and inevitable accidents by fire or the elements alone excepted.

10. It is hereby further covenanted, understood and agreed, that the part of the first part reserve and retain unto sel or agent, the right of entry upon said premises for the purpose of fall plowing any ground which may have been sown to small grain in the spring or fall preceding.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED by and between the parties aforesaid, that if the said tenant shall neglect or fail to cultivate and farm said premises, or any part thereof, or to care for and protect the same, or to harvest and gather the same in time, as hereinbefore covenanted and agreed, so that the crops and produce of said premises shall in consequence thereof fall short of what might have been produced and saved, none of the loss occasioned thereby shall fall upon said landlord, but shall receive share of what might have been produced and secured and saved, had said tenant fully kept and performed covenants and agreements, and if not paid or delivered to, may distrain therefor, the same as for share of the crops raised and secured.

AND FURTHER, that if said tenant shall remove or attempt to remove from said premises, or sell or transfer any of the crops grown thereon, before the same has been divided and the landlord has received proper share hereof, the said tenant shall forfeit to said landlord the whole of the crops and produce raised and grown on said premises, and said landlord shall have full right to re-enter said premises, and seize and take and hold all the crops and produce so raised and grown, and to maintain all proper actions and remedies therefor without any previous demand, which is hereby expressly waived.

AND FURTHER, that if the rent above reserved shall be unpaid in the kind on the day when the same ought to be delivered, as aforesaid, or any part thereof be not delivered at the proper time; or if default be made by said tenant in the keeping and performing of any of covenants and agreements, it shall and may be lawful for said landlord, heirs and assigns, agent or attorneys, at election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said tenant or any other person or persons occupying, in or upon the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to re-possess and enjoy as in first and former estate; and to distrain for any rent that may or ought to be due thereon, upon any property belonging to said tenant, assigns or sub-lessee, whether the same be free from execution and distress by law or not, all exemptions by law being hereby expressly waived in favor of said landlord, executors, administrators or assigns, for rent or for

damages growing out of the breach or non-performance of any of the covenants and agreements herein.

AND FURTHER, if said premises are at any time abandoned, that said landlord, executors, administrators or assigns, shall have the right to take full possession thereof, and cultivate and harvest the crops growing thereon, and gather and take care of the same, and in that case to add to the rents and damages the costs and expenses incurred thereby, which may be retained out of said crops.

AND FURTHER, if at any time said term shall be ended at the election of said landlord, executors, administrators or assigns, said tenant hereby agree to surrender up the possession of said premises peaceably, immediately upon such termination, and if remain in possession thereof days after notice of such determination and demand of possession shall be deemed guilty of a forcible detainer of said premises under the statute, and subject to eviction thereunder, or by force.

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

ATTEST:

[Signatures.]

1252. Ground Lease.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred , between , party of the first part, and , party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, executors, administrators and assigns, has demised and leased to the said party of the second part all those premises situate, lying and being in the , in the county of and state of Illinois, known and described as follows, to wit: [description]

TO HAVE AND TO HOLD the above described premises, with the appurtenances, unto the said party of the second part, executors, administrators and assigns, from the day of , in the year of our Lord one thousand nine hundred , for and during and until .

AND THE said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said party of the second part, does covenant and agree with said party of the first part, heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for said demised premises, at the office of , in , the sum of .

IT IS FURTHER COVENANTED AND AGREED, by the said party of the second part, that will pay or cause to be paid all water rates, and all taxes and assessments that may be laid, charged or assessed on said demised premises pending the existence of this lease, or if at any time after any tax, assessment, or water rate shall have become due or payable, the party of the second part, or legal representatives, shall neglect to pay such water rates, tax or assessment, it may be lawful for the party of the first part to

pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be so much additional and further rent, for the above demised premises due from and payable by the party of the second part; and may be collected in the same manner, by distress or otherwise, as is hereinafter provided for the collection of other rents to grow due thereon.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED, by the said party of the second part hereto, for heirs, executors, administrators and assigns, that the whole amount of rent reserved, and agreed to be paid for said above demised premises, and each and every installment thereof, shall be and is hereby declared to be a valid and first lien upon any and all buildings and improvements on said premises, or that may at any time be erected, placed or put on said premises by said party of the second part, heirs, executors and administrators or assigns, and upon his or her or their interests in this lease, and the premises hereby demised; and that whenever, and as often as any installment of rent or any other amount above declared to be deemed and taken as rent, shall become due and remain unpaid for one day after the same becomes due and payable, said party of the first part, heirs, executors, administrators, agent, attorney, or assigns, may sell at public auction, to the highest bidder for cash, after having first given ten days' notice of the time and place of such sale in some newspaper published in , all the buildings and improvements on said premises, and all the right, title and interest acquired by said party of the second part under this lease, to the premises herein described, and as the attorney of said party of the second part — hereby irrevocably constituted — may make to the purchaser or purchasers thereof a suitable and proper transfer, bill of sale, or deed of the same, and out of the proceeds arising from such sale, after first paying all costs and expenses of such sale, including commissions and attorney's fees, retain to himself the whole amount due on said lease, up to the date of said sale, rendering the surplus (if any) to said party of the second part, heirs, executors, administrators, agent, attorney, or assigns, which sale shall be a perpetual bar to and against all rights and equities of said party of the second part, heirs and assigns in and to the property sold.

AND the party of the second part further covenants with the party of the first part, that will keep said demised premises in a clean and wholesome condition, in accordance with the ordinances of the city, and directions of the health officers, and that, at the expiration of the time in this lease mentioned, will yield up said premises to the party of the first part, in as good condition as when the same were entered upon by the party of the second part, loss by fire, or inevitable accident, and ordinary wear excepted.

IT IS FURTHER AGREED, by the party of the second part, that neither nor legal representatives, will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereto, nor use, or suffer them to be used, for any other purpose calculated to injure the reputation of the premises, or of the neighborhood, or to impair the value of the surrounding neighborhood property for present use or otherwise.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day of payment, whereon it ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained to be kept by the party of the second part, executors, administrators, or assigns, it shall or may be lawful for the party of the first part, or heirs, executors, administrators, agent, attorney, or assigns, at election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in first and former estate; and to distrain for any rent that may be due thereon, upon any property belonging to the party of the second part, whether the same be exempt from execution and distress by law or not; and the party of the second part, in that case, hereby waives all legal rights which he now ha , or may have, to hold or retain any such property under any exemption laws now in force in this state, or in any other way; meaning and intending hereby to give the party of the first part, heirs, executors, administrators, agent, attorney or assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, heirs, executors, administrators, agent, attorney or assigns, as aforesaid, or in any other way, the party of the second part do hereby covenant and agree to surrender and deliver up said above described premises and property, peaceably, to the said party of first part, heirs, executors, administrators, agent, attorney or assigns, immediately upon the determination of said term as aforesaid; and if shall remain in possession of the same one day after notice of such default, or after the termination of this lease, in any of the ways above named shall be deemed guilty of a forcible detainer of the premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

AND IT IS FURTHER UNDERSTOOD AND AGREED, by the said party of the second part, that neither the right given in this lease to said party of the first part, to collect the rent that may be due under the terms of this lease by sale, or any proceedings under the same, shall in any way affect the right of said party of the first part to declare this lease void and the term hereby created ended, as above provided upon default made by said party of the second part.

AND the said party of the second part hereby waives right to any notice from said party of the first part, of election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent, or the possession of premises leased herein; but the simple fact of the non-payment of the rent reserved shall constitute a forcible detainer as aforesaid.

THE said party of the second part further agrees not to remove any buildings or other improvements from said premises, without written consent of said party of the first part, and that the said second party shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

IT IS FURTHER UNDERSTOOD AND AGREED, that all the conditions and covenants contained in this lease shall be binding upon the heirs, executors, administrators and assigns of the parties to these presents, respectively.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

In presence of

[Signature.]

1253. Ninety-nine Year Lease—Alternative.

THIS INDENTURE, made and entered into this day of , A. D. 19 , between , of the city of , county of , and state of , party of the first part [hereinafter designated lessor], and , of the city of , county of , and state of , party of the second part [hereinafter designated lessee], WITNESSETH:

First. The first party hereto, the lessor , in consideration of the rents hereinafter reserved and of the covenants and agreements herein expressed on the part of the second party, the lessee , to be kept, performed and fulfilled, ha demised and leased and by these presents do demise and lease unto the lessee all the following described premises situated and being in the city of , county of , and state of . [description]

To HAVE AND TO HOLD the above described premises, with the rights, privileges, easements and appurtenances thereunto attaching and belonging, unto the lessee for and during the term of ninety-nine (99) years from and after the first (1st) day of May, in the year of our Lord one thousand nine hundred and (A. D. 19); that is to say, from the first (1st) day of May, in the year of our Lord one thousand nine hundred and (A. D. 19), for and during and until the thirtieth (30th) day of April, in the year of our Lord two thousand and (A. D. 20), paying rent therefor, and yielding possession thereof as hereinafter provided.

Second. The lessee in consideration of the leasing of the premises aforesaid of the lessor to h , the lessee , do hereby covenant and agree to and with the lessor to pay rent as follows:

THE LESSEE COVENANT AND AGREE to pay the lessor as rent for said demised premises during the said demised term of ninety-nine years, the yearly rent or sum of dollars (\$), without any deduction or abatement whatever, which rental shall be paid in advance in four quarter yearly installments of dollars (\$) each, on the first day of each of the months of May, August, November and February, which shall be in each and every year during the said demised term (); and all of said payments during said demised term shall be paid in such place in the city of , in the state of , or in the city of New York, in the state of

New York, as the lessor may from time to time previously designate in writing, and in default of such designation, then at said demised premises. And it is further stipulated and agreed, that all rent reserved and agreed to be paid under this lease shall be paid in standard gold coin of the United States of America; and that by the word "dollar," wherever used in this lease, is meant that each dollar shall contain at least twenty-five and eight-tenths (25.8) grains of gold of the standards of weight and fineness observed at the mints of the United States and fixed by its laws at the time of the execution of this instrument.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED, by and between the parties that no acceptance by the lessor of any currency, legal tender, checks, coin, money or value whatever, except standard gold coin of the United States of America as hereinbefore specified, in payment of any installment or installments of rent, shall be construed to be a waiver on the part of the lessor of the right to demand the payment of any other unpaid installment or installments of rent in standard gold coin of the United States of America as hereinbefore specified.

Third. As a further consideration for the leasing and demising aforesaid, the said lessee further covenant, promise and agree to bear, pay and discharge, in addition to the said rent reserved, all rates, taxes, charges for revenue and otherwise, assessments and levies, general and special, ordinary and extraordinary, of every name, nature and kind whatsoever, including water rates, which may be taxed, charged, assessed, levied or imposed upon said premises, or upon any and all buildings and improvements thereon, and all which may be assessed, levied or imposed upon the leasehold estate hereby created and upon the reversionary estate in said premises during the term hereby granted, and so long thereafter as said lessee, his successors and assigns, shall occupy said demised premises. And it is further understood, covenanted and agreed by and between the parties hereto, that the first annual tax to be paid by the lessee shall be that for the year one thousand nine hundred and (A.D. 19), and the last that for the year two thousand and (A. D. 20), and the lessee further covenant and agree to obtain and deliver to the said lessor duplicate tax receipts of all taxes and assessments paid on said premises of every kind and nature whatsoever; and all such taxes and all such receipts shall be paid and made out in the name of the lessor, or his heirs, executors, administrators or assigns; and that the said duplicate tax receipts shall be sent by mail to said lessor, or one of them, on or before the first day of the tax sale for the year in which such taxes are payable of each and every year during the said demised term for all taxes and assessments for the year preceding.

Fourth. The lessee further covenant and agree to and with the lessor to erect, finish and complete at his own expense, with all reasonable dispatch, and with no further delays than may be necessary and unavoidable, upon the said demised premises a fire-proof building in a good and suitable manner, and have the same, in any event, complete and ready for occupancy and fully paid for, and free from all mechanics' liens, and free from any and all claims liable to ripen into mechanics' liens, on or before the first day

of _____, in the year of our Lord one thousand nine hundred _____ (A. D. 19____), which building shall not be less than _____ stories in height; to be well lighted in front and rear; to be in value not less than _____ dollars; to be constructed in accordance with the building ordinances of the city of _____; all elevators and light shafts of which shall be protected against fire in a good and substantial manner. And the lessee further agree to save lessor harmless from any damage to owners of adjoining lots by reason of the erection of any improvements upon said demised premises; nothing in this lease contained shall authorize the party of the second part to do any act or make any contract so as to encumber in any manner the title of the lessor in said land or buildings.

Fifth. It is hereby covenanted, stipulated and agreed by and between the parties hereto, that there shall, during the said demised term, be no mechanics' liens upon any buildings or improvements which may at any time be put upon or be upon said demised premises, and that in case of any mechanics' liens the lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said lessor shall have the right and privilege, at _____ option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said lessor, be so much additional rent due from said lessee at the next rent day after any such payment, with interest thereon at the rate of seven per cent. per annum; or the said lessor may, at _____ option (and the right and privilege to _____ is hereby expressly given and granted), if said default continues thirty (30) days after written notice as aforesaid, to declare this lease terminated, and upon termination of this lease, at the option of the lessor, on account of any mechanics' liens, as aforesaid, all buildings and improvements upon said premises are hereby declared to be and become immediately forfeited to the lessor without any compensation whatever to the lessee. and the lessor shall have full right and privilege (which right and privilege is hereby expressly given and granted) to enter upon said demised premises and take possession of all buildings and improvements thereon.

IT IS FURTHER AGREED, and notice is hereby given, that no mechanic's or other liens shall, in any way, manner or degree, affect the claim of the lessor on such buildings or attach to _____ rights in said premises.

Sixth. And the lessee do covenant and agree to and with the lessor, that _____, the lessee, will keep insured during said demised term any and all buildings or improvements that may be built or placed upon said premises, in a good and responsible company or companies, as may be approved by the said lessor, to an amount of not less than _____ thousand dollars (\$ _____), and all policies issued, and renewals thereof, of all such insurance upon the said buildings or improvements to the amount of _____ thousand dollars (\$ _____) are to be assigned to, and in case of loss to be made payable to, the said lessor, as _____ interest may appear, the same to be held by the said lessor as additional security for the amount of rent and the rebuilding herein provided for; and the said lessor, in case said buildings or improvements shall at any time or times be destroyed by fire

during said demised term, shall pay to said lessee, upon proper architect's certificates, so much of the said insurance money as may be received by reason of such loss or destruction, in such sum or sums as may be necessary to pay for rebuilding as herein provided; and at the time when such insurance money is paid by the lessor, the lessee shall expend on work done upon or for materials furnished for the restoration, repair or erection of any new building, an amount of money derived by h, the lessee, from sources other than said insurance money paid out by the lessor, equal to the amount of said portion so paid by the lessor. And it is understood and agreed that no interest is to be paid on said insurance money by said lessor during the time said money remains in h possession; and it is further agreed that any and all moneys which the said lessor shall receive by reason of any loss or destruction of the said buildings or improvements, is hereby constituted a trust fund, to be used for the rebuilding of the buildings and improvements upon the said premises, as herein provided for. And it is further agreed that said lessor shall properly disburse said moneys and use such toward rebuilding the buildings and improvements upon the said premises, as herein provided for; but it is expressly understood and agreed that this provision shall not prejudice the provisions in this lease contained, that said insurance money shall stand as additional security for the rent herein provided for. And it is further understood and agreed that the said lessor shall not be responsible for the collection or non-collection of any insurance money in any event, but only for such insurance money as shall come to h hands.

AND THE SAID LESSEE covenant and agree that if said buildings and improvements, or any part thereof, shall at any time or times during the continuance of said term, be destroyed or damaged by fire or other casualty, and as often as any building or improvement on said premises shall be destroyed or damaged by fire or other casualty, said lessee shall rebuild and repair the same upon the same general plan and dimensions as before the said fire or casualty, or other plan to be agreed upon in writing by the said lessor and lessee respectively, the construction so rebuilt and repaired to be of the value of not less than thousand dollars (\$), and have the same rebuilt and ready for occupancy within months from such loss or destruction, at h own expense, provided, that in case said buildings shall be destroyed or damaged so near the end of said term that there shall not be ample time (which term shall not exceed months) to rebuild or repair the same before the end of said term, then the insurance money on said buildings shall belong to and be paid to said lessee, except so much thereof as shall be equal to the sum due and to become due the said lessor, under the terms of this lease, which amount, if any, shall be paid to the said lessor, and in such case, the failure to rebuild or repair shall not be a cause of forfeiture of said leasehold interest; and it is covenanted and agreed that all and every sum or sums of money which shall be recovered or received by said lessee for and in respect of said insurance upon said building or buildings, shall be laid out and expended by h in rebuilding or repairing said buildings, or such parts thereof as shall be damaged as aforesaid, and

in case the lessee shall not have used or expended the insurance money on said premises as herein provided, it shall be lawful for the lessor to declare such term ended and into said premises to re-enter as hereinbefore provided, and any part of any building or buildings on said premises shall at once be forfeited to said lessor, and no compensation therefor shall be allowed to said lessee; and any balance of insurance money remaining in the hands of the said lessor shall, at their election or option, be forfeited to h as liquidated and ascertained damages, and not as a penalty or penal sum or in the nature thereof; but it is understood and agreed in case of a fulfillment by said lessee of h covenants in this lease, any surplus of any and all insurance moneys after the use of the same for the purpose provided in this lease, shall belong to and be paid over to said lessee.

AND IN CASE THE LESSEE shall neglect to insure and keep insured the buildings and improvements on said premises, the lessor may, at h election, procure and renew such insurance and add the amount paid therefor to the installment of rent next thereafter falling due under this lease, together with interest thereon at the rate of seven per cent. per annum.

Seventh. Said lessee hereby further covenant and agree that the said premises and buildings, which may, at any time, be thereon, shall, during the said demised term, be used only and exclusively for proper and legitimate purposes. And it is expressly covenanted between the parties hereto that the said lessee will not use or suffer nor permit any person to use in any manner whatsoever the said demised premises, or any building or improvements thereon, nor any portion thereof, for any purpose calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States, or of the state of , or of the ordinances of the city of ; or for any immoral or unlawful purpose whatever; or for any trade, business, occupation or vocation whatever, which may be in anywise disreputable or immoral, and that said lessee will, at h own proper costs and charges, keep the buildings which may be situated on said premises and all the appurtenances thereunto belonging, and the sidewalks, steps and excavations under the sidewalks, in a good, safe and secure condition, and any alley or alleys adjoining said premises, in a clean and safe condition, and will conform to all municipal ordinances or laws, and all other ordinances and laws affecting said premises, and the sidewalks, streets and alleys in front of and around said premises, and that h will keep and save the lessor forever harmless from any penalty or damage or charges imposed for any violation of any of said laws, whether occasioned by neglect of said lessee or by the tenants of said premises holding under h , and that said lessee will indemnify and save and keep harmless the lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by the said lessee or any person or persons holding under h , and will indemnify and save harmless the lessor from any claim for damages or penalty arising from the sale or giving away of any intoxicating liquors on or about the said premises and against and

from any loss, cost, damage or expense, arising out of any failure of the lessee in any respect to comply with the requirements and provisions of this lease binding upon h , the lessee .

Eighth. Said lessee further covenant and agree that h will not assign this lease, except by way of mortgage, until h shall have completed and paid for the building on the said demised premises, of the character and within the time hereinbefore specified.

THE LESSEE MAY, when there is a building erected which shall conform to the requirements of this lease and free from mechanics' liens and the possibility thereof and similar claims, sell or assign h interest in said leased premises and buildings thereon, provided that all rents, taxes, assessments, insurance and other charges of every kind shall be paid to the date of such assignment, and all covenants and agreements herein contained to be kept and performed by the lessee , shall be fully complied with at the date of such assignment or conveyance; and further provided, that in case of such sale or assignment of the said lease, the same shall be evidenced in writing, duly executed under seal and acknowledged by the assignee, and duly recorded in the recorder's office of , county and state of , whereupon and whereby the assignee shall expressly accept and assume all the terms and covenants in this agreement contained to be kept and performed by the lessee , and will comply with and be bound by them; and the said lessee covenant and agree that h will not make any assignment of this lease, except in the manner and upon the conditions as above set forth, and it is agreed and notice is hereby given, that any assignment of the said lease, leasehold interest or buildings upon said property, not in strict conformity with these provisions, shall be absolutely null and void.

SAID ASSIGNEE , and succeeding assignees, shall be subject to the same terms and conditions as to future assignments, and the lessee herein so assigning and conveying shall thereof and thereby then be forever released and discharged from this lease and from the agreements and covenants in this lease contained, providing said assignment shall have been made to be carried into effect an absolute and bona fide sale of said lessee interest in said premises.

NO BUILDING erected under the provisions of this lease upon said premises, shall be removed or torn down without the consent in writing of the said lessor .

Ninth. It is further agreed that in no case shall the lessor herein be liable, under any express or implied covenants in this lease, for any damages whatsoever to the lessee beyond the rent reserved by this lease accruing, for the act, or breach of covenant, for which damages may be sought to be recovered against said lessor , and that in the event that said lessee shall be ousted from the possession of said premises by reason of any defect in the title of said lessor , said lessee shall not be required to pay any rent under this lease while h so deprived of the possession of said premises, and that said lessor shall not incur any liability by such custer beyond the loss of rent while said lessee so deprived of the possession of said premises.

Tenth. It is expressly agreed by and between the parties hereto, that any

installment of rent accruing under the provisions of this lease, which shall not be paid when due, shall bear interest at the rate of seven per cent. per annum from the date when the same was payable by the terms of this lease until the same shall be paid by the said lessee .

Eleventh. It is hereby further covenanted, stipulated and agreed by and between the parties hereto, that the lessor shall, at h option, have the right at all times during said demised term, to pay any rates, taxes, assessments, water rates or other charges upon said premises and reversionary interest therein remaining unpaid after the same have become due and payable, and to pay, cancel and clear off all tax sales, liens, charges and claims upon or against said demised premises or reversionary interest therein, and to redeem said premises from the same, or any of them, from time to time, and the amount paid, including reasonable expenses, shall be so much additional rent due from the lessee at the next rent day after any such payment, with interest thereon at the rate of seven per cent. per annum from the date of the payment thereof by the said lessor , until the repayment thereof to the said lessor by the said lessee

AND IT IS FURTHER PROVIDED that if the lessor at h option, shall advance or pay any such rates, taxes, assessments, water rates or other charges, or pay, cancel and clear off any tax sales, liens or charges and claims upon and against said demised premises or the reversionary interest therein, it shall not be obligatory upon the lessor to inquire into the validity of any such rate, tax or assessment, or other charge, or any such tax sale. .

Twelfth. And it is further understood, covenanted and agreed by and between the parties hereto, that in case, at any time, default shall be made by the lessee , in the payment of any of the rent herein provided for upon the day the same becomes due or payable, and such default shall continue thirty days (after notice thereof in writing by the lessor , or their agents or attorneys to said lessee), or in case any default in relation to liens as hereinbefore provided shall continue thirty (30) days after written notice, or if the lessee shall fail to pay any of the rates, taxes or assessments herein provided for to be paid by him, within the time herein provided for, or in case of the sale or forfeiture of said demised premises, or any part thereof, during said demised term, for the non-payment of any tax, rate or assessment, or in case the lessee shall fail to keep insured any building or buildings or improvements which may at any time hereafter be upon the said premises as herein provided for, or fail to spend insurance money as herein provided for, or fail to rebuild as herein provided, or if h shall fail in any of the covenants of this lease by h to be kept or performed, then in any or either of such events, it shall and may be lawful for the lessor , at h election, at or after the expiration of ten (10) days' previous notice in writing to declare said demised term ended and into said demised premises, and the buildings and improvements situated thereon, or any part thereof, either with or without process of law, to re-enter, the said lessee hereby waiving any demand for possession of the demised premises and any and all buildings and improvements then situated thereon. And the lessee covenant and agree upon the termination of said demised term at such election of said lessor , or in any other way, he , the lessee , will sur-

render and deliver up said above described premises and property peaceably to said lessor, his agents or attorneys, immediately upon the termination of said demised term; and if said lessee, his agents, attorneys and tenants shall hold the said premises or any part thereof one day after the same should be surrendered according to the terms of this lease, they shall be deemed guilty of forcible detainer of said premises under the statute, and shall be subject to eviction and removal, forcibly or otherwise, with or without process of law.

Thirteenth. It is further covenanted and agreed by and between the parties hereto, that in the event of the determination of this lease at any time before the expiration of said demised term of ninety-nine years, for the breach of any of the covenants herein contained, then, in such case, all buildings, fixtures and improvements then situate on said demised premises shall be forfeited to said lessor and become his property, and no compensation therefor shall be allowed or paid to said lessee.

Fourteenth. It is mutually covenanted and agreed that the various rights, powers, options, elections, appointments and remedies of the lessor contained in this lease shall be construed as cumulative, and no one of them as exclusive of the other, or exclusive of any rights or priorities allowed by law.

Fifteenth. And it is further understood and agreed by and between the parties hereto, that the right given in this lease to the said lessor to collect the rent that may be due under the terms of this lease by any proceedings under the same, or the right to collect any additional rent, moneys or payments due under the terms of this lease by any proceedings under the same, or the right herein given the lessor to enforce any of the terms and provisions of this lease, shall not in any way affect the right of such lessor to declare this lease void, and the term hereby created ended, as herein provided, when default is made in the payment of said rent, or when default is made by the lessee in any of the terms and provisions of this lease.

Sixteenth. And it is mutually covenanted and agreed by and between the parties hereto, that in case the lessor, or either of them, shall, without any fault on his part, be made party to any litigation commenced by or against the lessee, then the lessee shall pay all costs and attorney's fees incurred by or against the lessor, or either of them, by or in connection with such litigation, and the lessee shall and will also pay all costs and attorney's fees incurred by or against the said lessor, or either of them in enforcing the covenants, agreements, terms and provisions of this lease; and that all such costs and attorney's fees, if paid by the lessor, or either of them, and the rent reserved in this lease, and all taxes and assessments, and the payment of all money provided in this lease to be made to the lessor, shall be and they are hereby declared to be a first lien upon all buildings and improvements placed upon said demised premises at any time during the term of this lease, and upon the leasehold estate hereby created, and upon the rents of all buildings and improvements situated on said premises at any time during said term.

Seventeenth. And it is further agreed as a condition of this lease that in every case where, in the opinion of the lessor, or under the conditions of this lease, it shall be deemed necessary for the interest of the lessor to serve a notice or demand on the lessee concerning this lease, or any of

the conditions or provisions thereof, it shall be a sufficient service of such notice, demand or declaration to leave a copy thereof at the place of business of said lessee, at _____, or by posting the same on the front of any building on said premises.

Eighteenth. It is covenanted and agreed that no waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach of the same covenant.

Nineteenth. It is further covenanted and agreed that at the time and upon the day of the termination of this lease, to wit: upon the _____ day of _____, in the year of our Lord two thousand and _____ (A. D. 20 _____), at twelve o'clock noon, said lessee or _____ successor or successors will convey all of said buildings and improvements to the said lessor, _____ legal representatives or assigns, by a good and sufficient deed of conveyance and will immediately surrender, yield and deliver up peaceably said above described premises in good condition, and any and all buildings and improvements thereon in a good and perfect condition, ordinary wear and tear, depreciation and decay excepted. It being, however, fully understood and agreed by and between the parties hereto that it is a condition of this lease that all buildings and improvements and fixtures upon the said premises at the termination of the said demised term, providing this lease is not sooner determined, shall, at and upon the date of the expiration of said demised term, revert to and become the exclusive property of, and be vested in the said lessor without any such deed of conveyance from the said lessee to the said lessor, and without any compensation therefor to the said lessee.

Twentieth. It is mutually covenanted and agreed by and between the parties hereto, that each of the expressions, phrases, terms, conditions, provisions, stipulations, admissions, promises, agreements, requirements and obligations of this lease shall extend to and bind or inure to the benefit of [*as the case may require*] not only the parties hereto, but each and every of the heirs, executors, administrators, successors and assigns of the respective parties of the first and second part hereto; and wherever in this lease a reference to either of the parties hereto is made, such reference shall be deemed to include, wherever applicable, also a reference to the heirs, legal representatives and assigns of such party, the same as if in every case expressed, and all the conditions and covenants contained in this lease shall be construed as covenants running with the land.

And _____, wi _____ of the said lessor, _____ join in this lease for the sole purpose of evidencing _____ he consent to its execution, and releasing _____ he right of dower and homestead in said premises as against the said lessee.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and set their seals the day and year first above written, this indenture being executed in duplicate.

[Signatures and seals.]

INDIANA.

1254. Farm Lease.

THIS AGREEMENT, made this _____ day of _____, 19 _____, by and between _____ of the first part, and _____ of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the agreements and undertakings hereinafter undertaken by the said party

of the second part, has leased and demised unto the said party of the second part, the following lands and tenements, to wit: [*description*] in the county of _____, and state of _____, from the _____ day of _____, 19____, to the _____ day of _____, 19____, and the said party of the second part agrees, in consideration of the above leasing, to pay the party of the first part, as rent _____ . All corn to be divided, in proper proportion, by the rows in the field, and rent corn to be gathered out before, or as fast as the lessee's, and put in cribs on the farm; cribs to be provided by lessor. All rent corn to be put in cribs on or before December 25, 19____. And, further, that he will clean out and keep open all ditches on said land twice a year — in the spring with a fork, and in the fall with a spade and shovel, without charge to the said lessor. And the said lessee further agrees that he will, between the tenth day of August and the first day of September in each year of this lease, mow all weeds and grass between his crops and hedges or fences; that he will go over during the same time all the lands herein named and cultivated and plow under, pull up or cut up all the following weeds on said lands, to wit: Thistles, mullein, butter prints, jimson weeds, burdock and cockle burs; mow the roads on said tract, and if not so done lessor can hire it done and retain a lien on the crop for the expenses thereof; that he will not stack, thresh or deliver any grain while wet or in bad order. Any incoming tenant is to have the right to do any fall plowing he may deem necessary, but no injury is to be done growing crops. Said cash rent shall be paid along as the crops are marketed, and all by the 25th day of December in each year of this lease; and if not so paid to draw interest at the rate of eight per cent. until paid for the use of the same; that said party of the second part will not commit any waste on said premises, nor suffer the same to be done; that he will not assign this lease or underlet said premises, or any part thereof, nor make any alteration of the premises without the consent of said lessor, and that at the expiration of said term he will surrender said premises without let or hindrance to the said lessor, his attorney, heirs or administrators, or executors, in as good a condition as they were at any time during said term, usual wear and accidents by fire excepted. The said lessee further agrees that he will rebuild any fences when blown down by wind or thrown down by trespassers, all without charge to said lessor, and that he will tend, trim, and take care of all hedges growing on said lands; no stock but lessee's allowed to run on stalk-field without lessor's consent in writing, nor shall the stalk-fields nor any meadowland be pastured when the ground is too soft. The said lessee agrees that he will farm all the land herein described in a good and husbandlike manner, planting and gathering in proper season, with a due regard for rotation of crops; that he will trim yearly all orchards, haul and spread what manure is made on said premises; that he will not burn or haul off the straw of grain raised upon said premises, nor suffer the same to be done, but will scatter and plow under the same whenever it can be done, and that he will, upon reasonable notice, do all the plowing with horses that may be necessary to plant, and will plant and tend a hedge on said premises; and the lessor reserves to himself the right to enter upon said premises for the purpose of making any inspection, repairs or improvements, or to distrain for rent. It is further agreed _____ .

If at any time the said rent shall be due, and remain unpaid for ten days, said lessor, his attorney, or legal or personal representatives, may enter and take possession of said premises, using whatever force may be necessary to obtain possession of the same, and declare this lease ended, said lessee waiving notice or demand for possession. Said lessor further agrees to warrant and defend the said premises in the quiet and peaceable possession of said lessee during his compliance with this lease.

WITNESS our hands in duplicate the date above.

[Signatures.]

1255. Oil, Gas and Mineral Lease.

THIS INDENTURE, made and entered into this day of , 19 , by and between of the county of and state of Indiana, party of the first part, and of the county of and state of Indiana, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of one dollar (\$1.00), in hand paid to the party of the first part by the party of the second part, receipt whereof is hereby acknowledged, and in further consideration of the fulfillment of the stipulations and agreements hereinafter recited, does hereby grant, demise and lease, to the party of the second part, heirs, successors, assigns and sub-lessees, the exclusive right to enter upon, erect derricks and other necessary buildings, and drill, bore and prospect for water, oil, natural gas, mineral coal, iron ore, stone, and other minerals and ores, and valuable substances, on the following described real estate situate in the county of and state of Indiana, to wit: [description].

THIS LEASE AND AGREEMENT is made on the following conditions and terms, to wit:

The said party of the second part, heirs, successors, assigns, and sub-lessees, is to have and to hold said premises, only for the purposes above recited, for and during the term of ten (10) years from the date hereof, and as much longer as mineral water, oil, natural gas, or other valuable substances, or mineral coal, iron ore, stone, or other mineral or ores, are found on such premises in paying quantities.

Said party of the second part, heirs, successors, assigns, and sub-lessees, in consideration of said grant and demise, agrees to deliver to the credit of the party of the first part, heirs, executors or assigns, free of cost, in the pipe-lines to which it may connect its lines, the full, equal of all oil produced and saved on leased premises.

Said party of the second part agrees to pay to the party of the first part, heirs, executors or assigns, the sum of dollars per year for the gas from each and every gas well drilled on the said premises, such payment to be made for each well within sixty (60) days after commencing to use the gas therefrom, as aforesaid, and to be paid yearly thereafter while the gas from such well is so used.

The party of the second part covenants and agrees to locate all wells so as to interfere as little as possible with the cultivated portions of the farm,

and to operate all pipe-lines so as not to interfere with the cultivation of the land; and further, to complete a well upon said premises within from the date hereof, or to pay the sum of , yearly, in advance, for each additional twelve months such completion is delayed, from the time above mentioned for the completion of such well until the well is completed.

It is agreed that the completion of such well shall be and operate as a full liquidation of all rental under this provision, during the remainder of the term of this lease.

It is further agreed that failure on the part of the party of the second part to comply with the conditions herein named, or to pay the cash consideration herein mentioned, within ninety days after the time given for the happening or the payment of the same, then, and in that event, this lease may be declared null and void, and the right to so declare this lease null and void shall extend to both parties to this agreement, together with their heirs, executors, grantees, successors, assigns and sub-lessees.

It is further agreed that the party of the second part is to have the privilege of using sufficient water from the premises to run all necessary machinery, and at any time to remove any machinery, fixtures, pipes, pipe-lines, buildings and appliances placed on said premises.

The party of the second part, heirs, executors, assigns and sub-lessees, as well as laborers and workmen, is hereby granted full and ample right to enter upon said lands, to search and explore for coal, iron ore, stone, and other minerals and ores, and to dig for, mine, raise and remove the same; also to make surveys for, construct and operate any railroad, switch, sidetrack, tram or coal road, over, under or through said land, which the said party of the second part, heirs, executors, assigns or sub-lessees may deem necessary in order to search for, mine, work or remove such coal, iron ore, stone, or other minerals or ores, from and over said land.

The said party of the second part, heirs, executors, assigns and sub-lessees, is hereby granted the right to occupy and use so much of the surface of the said land, not exceeding acres, as may deem necessary for fully operating and developing the mines for coal, iron ore, stone, and other minerals or ores, the erection of machinery, tenement-houses for workmen, and other necessary buildings, and also grounds for the storing and handling of the coal, iron ore, stone, and other minerals or ores which may, from time to time, be mined and brought to the surface; also granting to the said party of the second part, heirs, executors, assigns and sub-lessees, full right of ingress, egress and regress into, over, under and upon said lands, for any of the purposes aforesaid; also the right to work, mine, dig, quarry, raise and remove any coal, iron ore, stone, and other minerals or ores off and from said land.

In consideration whereof the party of the second part, heirs, executors, assigns and sub-lessees, agrees to exert influence and to devote time and labor to the procuring to be constructed into the neighborhood of said land a railroad switch, coal or tram road, upon which coal, iron ore, stone, and other minerals and ores may be carried and transported, such railroad switch, coal or tram road to be built without any cost or expense to the party of the first part.

And the said party of the second part further agrees to do no unnecessary damage to the said land in exercising any of the rights hereinabove granted; and that for every ton of coal, iron ore, stone, or other minerals or ores mined and removed from said land the said party of the second part, heirs, executors, assigns and sub-lessees, shall pay to the party of the first part, heirs or assigns, the price and sum of _____ cents.

It is further expressly agreed that should the said party of the second part, heirs, executors, assigns or sub-lessees, fail to prospect for, find and remove coal, iron ore, stone, or other minerals or ores from the said land within five years from the date hereof, then this lease and conveyance, so far as the same refers and applies to the opening and developing of mines for coal, iron ore, stone, and other minerals or ores, shall cease and be utterly void.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, in duplicate, the day and year first above written.

[Signature and seals.]

IOWA.

1256. Coal Lease.

ARTICLE OF AGREEMENT, made and entered into this _____ day of _____, 19____, by and between _____ [husband and wife], part of the first part, and _____ part of the second part,

WITNESSETH, that the said part of the first part agree to sell and convey all the coal that is or may underlie the surface of the following described tract of land situated in _____ county, Iowa, to wit: [description] containing in all _____ acres more or less.

And also grant the exclusive rights to test, open, mine and remove said coal; and further grant the rights to construct railroads, underground entries, and all necessary buildings and fixtures to facilitate the mining and removing of said coal. Railroad right-of-way is not to exceed sixty feet in width, and shall follow division lines or fences so far as may be practicable, and shall be fenced with a legal fence at expense of the second part hereto.

The second part shall have the privilege if _____ so desire of purchasing _____ acres of said land at \$ _____ per acre, but said _____ acres shall be selected by mutual agreement. It is further agreed that no hoisting shaft shall be sunk within forty rods of any dwelling-house now on said premises.

IT IS AGREED by the second part that _____ will within _____ months from the date of this contract commence a test of said land by drilling; and in case there should be discovered a mineable vein or basin of coal, of sufficient quantity and quality to justify the opening and mining of said coal in the opinion of the said second part, then _____ agree to mine out said coal and pay the following rate per ton for all lump coal mined on said premises, to wit:

_____ cents per ton for each ton of two thousand pounds of lump coal, payments to be made and continue in the following manner, to wit: Pay in hand one dollar, the receipt of which is hereby acknowledged, and to pay at the above specified rate for all lump coal mined in any calendar month on or before the 25th day of the succeeding month.

Lump coal under this contract is understood to be such coal as will pass

over a screen constructed of iron bars placed not more than one and one-half inches apart. No royalty to be paid on any coal which will pass through a screen constructed as above described.

The second part also agree that will furnish a true and correct record of all drilling done on said premises, and that for the year commencing , 19 , will mine not less than thousand tons of coal, and a like amount each year thereafter until the coal becomes exhausted or unmineable; provided, however, that if the second part fail to mine the above mentioned quantity of coal in any year, may pay the royalty on the quantity above stated and continue this lease, but for any amount paid for which coal has not been mined shall have credit on royalty for coal mined in succeeding years.

IT IS ALSO AGREED, that all coal mined on said premises is to be accurately weighed and the weights to be kept in a book which shall at all reasonable times be open to the inspection of the first part or agents. And it is further agreed that the part of the second part to have the privilege of using said railroads, underground entries, buildings and fixtures for the purpose of mining and removing coal from underneath other lands, and after the coal from under the above premises becomes exhausted or unmineable may continue to use said railroads, underground entries, buildings and fixtures by paying the part of the first part an annual rental of \$10 per acre for each acre of surface of the above described lands used by said second part. The right to use the underground entries is granted for a period of twenty years without charge or cost to said second part.

All moneys due under this contract are payable in U. S. gold coin or its equivalent, at .

A failure to comply with any or all the conditions to this lease shall not render the second part liable to any damages further than the forfeiture of this contract.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, in duplicate, the day and year first above written.

[Signatures and seals.]

In presence of

[Signatures.]

KANSAS.

1257. Pasture Lease.

THIS LEASE, made this day of , 19 , between , party of the first part, and of county, Kansas, party of the second part,

WITNESSETH, that for and in consideration of the sum of dollars, the said first party hereby leases to said second party, for pasture and hay land only, the following lands in county, Kansas, with the appurtenances thereunto belonging, to wit: [description] of section No. , township No. , Range No. , for the term commencing on the first day of , 19 , and ending on the first day of March, 19 .

Said second party agrees not to sublet, or permit any other person to occupy said premises, without the written consent of first party, and at the

expiration of this lease to surrender possession of said premises, with the improvements belonging to it, to first party, in as good condition as when taken—usual wear, tear, and damage by the elements excepted.

IT IS FURTHER AGREED, that in case of the breach of said second party, of any of the covenants or agreements herein mentioned, by him to be performed, then and in that case this lease shall terminate without notice of any kind; and upon its termination, either by reason of lapse of time or breach of any of the covenants or agreements herein, it shall be lawful for said first party, his agent or attorney, to re-enter into said premises, and the party of the second part and each and every other occupant to remove and put out.

In case of a sale of said premises during the term of this lease, and purchaser desiring possession, said second party agrees to surrender the same at once on repayment to him of his rent-money .

Said second party is given permission to fence or make other improvements on the farm during his term of lease, at his own expense, and remove them from the farm at the termination of his lease.

IT IS FURTHER AGREED,

[Signatures.]

1258. Gas and Oil Lease.

AGREEMENT, made this day of , A. D. 19 , between of county, state of , lessor , and of , state of , lessee ,

WITNESSETH, that said lessor , in consideration of the sum of dollars, to in hand paid by the lessee, the receipt of which is hereby acknowledged, and of the covenants hereinafter set forth to be kept, paid and performed by the lessee, he leased and let, and by these presents do grant, lease and let unto the said lessee and assigns,

ALL the oil and gas in and under the following described tract of land, situate in the county of , and state of , to wit:

Section , township , range , acres , and containing in all acres.

To have and to hold the same for the term of years from this date, and as much longer as oil and gas, or either of them, shall be produced from said land by the lessee, together with such rights of way and privileges on said land as may be reasonably necessary for the purpose of operating for, producing and removing said oil and gas in a careful and economical manner, including the right to use water either from natural streams or from water wells which the lessee may drill thereon; the right to lay and use lines of pipes for conveying oil, water and gas; the right to erect and operate such tanks, pumps, derricks, power stations, shackle lines and other appliances as may be required for said purposes; and the right to remove, at any time while this lease may remain in force and during three months after its termination, all property, appliances and materials which may be placed on said land by the lessee.

The lessee agrees to yield and pay to the lessor the part or share of all the oil which he may obtain and save from said land, which share shall be delivered to the lessor from the lessee's tanks at the wells, or for the

lessor's credit to such pipe line company as may connect its lines with said tanks, and to pay for the gas at each well which shall not produce oil in paying quantities, but produce gas in marketable quantities, a royalty of each in advance while said gas shall be sold by the lessee, except that during the time any such gas well shall be "shut in" by reason of there being no profitable market for its output, the royalty thereon shall only be each in advance.

For the purpose of drilling and operating on said land, the lessee shall have the right to use, free of royalty, so much gas as may be necessary for any well or wells he may drill thereon; but if the lessee shall use gas for drilling or operating on other lands from any oil well he may drill on this land, or from any gas well he may drill thereon not at the time producing gas in quantities sufficient to be marketed profitably, he shall pay to the lessor a royalty of fifty cents per month for each well from which the gas may be so used, while such use continues.

While the lessee may operate any well on said land for gas purposes, the lessor shall be entitled to a supply of gas free from such well or wells for stoves and inside lights in the principal dwelling-house on said land; or if there be no such gas well, the lessor shall be entitled to said free gas from any oil well or wells on said land which may by natural pressure produce enough gas to supply said stove and lights, in excess of the quantity required by the lessee (he having first right thereto) for drilling and operating on said land, but the lessee shall not be obliged to confine the gas in any oil well for the purpose of supplying said stoves and lights when to do so will interfere with operating the well for oil purposes. The use of said gas shall be at the risk of the lessor, and shall furnish and put in place the pipe and fittings necessary to connect said stoves and lights with the wells.

No well shall be drilled within feet of the buildings now on said land, except by mutual consent of the lessor and lessee.

The lessee shall pay for all injuries he may do to growing crops, fences, hedges, and fruit trees in operating under this lease, and shall bury all oil, gas and water lines, if requested by the lessor, so that said line will not interfere with farming, and shall, upon abandoning any well, plug the same according to law.

The lessee agrees to complete a well on the land above described within from the date hereof, or pay to the lessor for further delay a rental of \$ in advance for each additional such completion is delayed. All royalties, delay rentals and other payments which may fall due under this lease shall be paid direct to or be deposited to credit in Bank of , which is hereby constituted agent of the lessor, with power to receive and receipt for the same. Upon failure of the lessee to make any of the payments above provided for delay in completing a well on the date upon which the same become due, the lessor shall have the right to declare a forfeiture of this lease if such payment be not made within after written notice to pay the same.

If at any time after a well or wells have been drilled under this lease, shall elapse without any revenue being received by the lessor from said wells, and without any further drilling being done by the lessee, this lease

shall be deemed abandoned and the rights of the lessee thereunder ended, except that the lessee may within thereafter remove the machinery and other property placed by it upon said land.

Upon the payment of dollars at any time by the lessee to the lessor , the lessee shall have the right to surrender this lease for cancellation; and upon such surrender being made, all payments and liabilities thereafter to accrue by the terms of this lease shall be avoided and extinguished and this lease become null and void.

The terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the heirs, executors, administrators and assigns of the lessor , and upon the and assigns of the lessee, respectively, with the same force and effect as they are hereby made binding upon the lessor and lessee.

Executed this day of , A. D. 19 , by the above-named lessor and lessee.

[Signatures and seals.]

WITNESS:

[Signatures.]

1259. Mineral Lease.

THIS AGREEMENT, made this day of , 19 , by and between , of county, state of , part of the first part, and of , state of ; part of the second part,

WITNESSETH, part of the first part, in consideration of the sum of dollars, in hand paid by the part of the second part, the receipt whereof is hereby acknowledged, do hereby grant, demise and let unto the part of the second part and assigns, all the oil, gas, coal, and other minerals in and under the following described tract of land, and also the said tract of land for the purpose and with the exclusive right of drilling, boring, mining and operating thereon, also such other privileges as are necessary for conducting said operations, and the right to remove all other property placed thereon by said second part , namely, all that certain tract of land situated in the county of and state of Kansas, described as follows, to wit: Section , township . range , containing acres, more or less; but no wells are to be drilled or bored within four hundred (400) feet of the present buildings without the consent of the part of the first part.

TO HAVE AND TO HOLD THE SAME unto the part of the second part, heirs and assigns, for the term of years from the date hereof, and as much longer as such oil, gas or other minerals are found in paying quantities thereon, allowing and paying to part of the first part the part or share of oil saved from that produced on the premises, delivered free of expense into tanks or pipe lines to the first part credit.

Should any well produce gas in sufficient quantities to justify the second part marketing the same in its pipe line, the part of the first part shall be paid at the rate of per year for such well as long as the gas therefrom is conveyed and sold off the premises, the first payment to become due ninety days after a well is turned into pipe line for marketing, and quarterly thereafter.

If gas is found in quantities profitable to lessee and conveyed from the premises, the lessor may have gas free of charge by laying the necessary pipe line and making connections at cost at such point as may be designated by lessee for private use in the mansion house on said premises, to be used with economical appliances subject to approval of lessee, said gas to be used at lessor own risk, and lessee not to be in any way liable for insufficient supply of gas caused by the use of pumping station, breakage of lines, or other causes. But nothing herein shall prevent the lessee from abandoning any well or wells and removing the pipe therefrom.

If coal, fire clay, pottery clay, shale, or any other mineral is found in paying quantities on said land, then the part of the second part shall pay to the part of the first part a royalty of cents for each ton of , cents for each ton of , cents for each ton of , cents for each ton of mined and sold off the premises. Such payment to be made three months after the first shipment thereof shall have been marketed, and quarterly thereafter.

Provided, however, that this lease shall become null and void and all rights thereunder shall cease and determine unless one well shall be begun on said premises within year from the date hereof, or unless the lessee shall pay at the rate of dollar for each additional month such well is delayed, from the time above mentioned for the drilling or boring of said well, until one well is begun.

Part of the second part agree to keep closed all gates, and to keep in repair all fences used by , and to pay all damages to grain, live stock, and other property that may be incurred by in prospecting said land until the first discoveries of oil, gas, or other minerals shall have been made.

It is agreed that all the conditions and terms herein shall extend to the successors, heirs, executors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the lessor and lessee have hereunto set their hands, the day and year above written.

[Signatures.]

WITNESSES:

[Signatures.]

1260. Lease — To Break and Cultivate Land.

THIS INDENTURE, made this day of , A. D. 19 , between , party of the first part, and , of , county of , and state of , party of the second part,

WITNESSETH, that said party of the first part, in consideration of the rents and covenants herein specified, does hereby let and lease to the said party of the second part the following described property, situated in the county of , and state of , to wit: [description] with the appurtenances, until , A. D. 19 , save and except as hereinafter provided, and subject to the conditions hereinafter specified.

Said second party does hereby hire said premises, and agrees with said first party, its agent or assigns, as payment to said party of the first part, for the use and benefit accruing to from the use and occupancy of the above described premises, that he will and do hereby bind , heirs and executors, as follows:

First. That he will immediately or as soon as practicable, break and properly cultivate all the tillable land above described, receiving as sole compensation therefor the crops raised thereon for the seasons of 19 and 19 , and the use and profit of said premises for said seasons of 19 and 19 , save and except as hereinafter provided in this lease.

Second. That he will allow no waste during occupancy of said premises, of fencing thereon, of timber, nor damage to any building thereon, natural wear and tear or damage by the elements excepted.

Third. That he will not sublease, release, or assign this lease, without the written consent of the said party of the first part, and that he will at the expiration of the said term of rental yield and deliver up the premises herein leased, together with all improvements that may have been placed thereon by the said party of the first part during occupancy thereof.

Fourth. That if the said party of the second part shall fail to break all of said premises which are tillable, during the year 19 , or shall fail to plant and properly cultivate all the lands broken, during the years 19 and 19 , then upon such failure, the party of the first part shall have the privilege of declaring this lease void, at its option, and all rights of said party of the second part under this lease shall utterly cease and terminate, and the said party of the first part shall be immediately entitled to the possession of said premises without the payment of any damages to said party of the second part therefor.

Fifth. That in case of a sale of said premises during their occupancy by the party of the second part, and the purchaser desiring possession, said party of the second part hereby agrees to surrender the same at once to said purchaser or purchasers: Provided, however, that if said sale be made after the crop for the season of 19 be planted and before the same be harvested, said party of the second part shall have the right and be entitled to harvest and retain said crop, and in addition thereto shall be paid the sum of dollar per acre for all the land broken by said party of the second part; and provided further, that if said premises herein leased be sold after the crop for the season of 19 be planted and before the same be harvested, then and in that case said party of the second part shall have the right and be entitled to such crop or crops, and may harvest and retain the same, but is to receive no further pay or compensation on account of the breaking done by said party of the second part ; and upon the above being fully complied with said party of the second part hereby surrenders all claim or claims under this lease.

IN WITNESS WHEREOF, the said parties have hereto set their hands, the day and year first above written.

[Signatures.]

Executed in presence of:

[Signatures.]

1261. Lease — Farm Property.

THIS INDENTURE, made this day of , in the year of our Lord 19 , between , party of the first part, and of county, and state of Kansas, party of the second part,

WITNESSETH, that said party of the first part, in consideration of the

rents and covenants herein specified, does hereby let and lease to the said part of the second part the following described property, to wit: [*description*] of section No. , township No. , range No. , in the county of , state of Kansas, with the appurtenances, for the term of months, commencing the day of , 19 , and ending the day of , 19 .

Said second part do hereby hire said premises, and agree with said first party, agent or assigns, as payment to said first party for the use and benefit accruing to h from the use and occupancy of the above described premises, that will and do hereby bind , h heirs and executors, as follows:

First. To cultivate in good, careful and proper manner all the tillable land on said premises now in cultivation.

Second. That he will allow no waste during occupancy of said premises, of fencing thereon, of timber, nor damages to any building thereon, natural wear and tear, or damage by the elements, excepted.

Third. That he will take good care of all growing trees thereon of all kinds, protecting them from being destroyed by stock or otherwise.

Fourth. That during occupancy of said premises he will not remove, nor allow any other person to enter upon and remove from said premises any part or portion of the fences, buildings, fruit or ornamental trees, or shrubbery, or any of the improvements of any kind or nature whatever, upon said land, which are upon said land when he become occupant thereof, or which may be placed thereon by said party of the first part, or authorized agent, during the term of occupancy of said premises. And in case of such waste or removal of any of the improvements, the party of the first part, or his attorney or agent, shall at once re-enter upon and occupy said premises, and said second part will at once give peaceable possession of said premises, and pay at once to said first party the full value of all improvements thus taken from said premises.

Fifth. Said second part do hereby further agree that he will, at own expense, during the continuance of lease, keep the said premises and every part thereof in good repair; that he will, as far as possible, protect said premises from danger by fire, by plowing and burning when necessary; that he will not sub-lease, re-lease, or assign this lease, without the written consent of said party of the first part; and that he will, at the expiration of said term of rental, yield and deliver up the property herein rented in like condition as when taken, together with all improvements that may be placed thereon by said first party during occupancy thereof, reasonable use and wear thereof, and damage by the elements, excepted.

Sixth. For the use of said premises for the term mentioned, he hereby covenant and promise to pay to said first party, or agent authorized by to receive it, of the wheat, of the corn, of the fruit properly taken care of at the same time and in the same manner in which said second part shall take care of portion of said crops; and when threshed or husked, said first party's share of said grain shall be delivered

Seventh. That in case of sale of said premises during their occupancy by said second part , and purchaser desiring possession, said second part hereby agree to surrender the same at once, on payment to of a fair and reasonable compensation for the growing and immature crops; and if he and purchaser cannot agree as to the amount of such compensation, it shall be left to three disinterested appraisers, of whom said second part shall choose one, the purchaser one, and these two shall choose a third one. Their decision shall be final as to the amount to be paid by the purchaser to said second party.

Eighth. The said part of the second part do hereby expressly waive the benefit of all the exemption laws of the state of Kansas relating to personal property, for the payment of said rent and fulfillment of the above contract on part. And the said party of the first part does covenant that the said part of the second part, on paying the aforesaid money and share of grain in manner herein stated, and performing all the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said premises for the term aforesaid: PROVIDED, That in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, or said second part shall allow undue waste or destruction of any of the grain growing thereon, then it shall be lawful for the said party of the first part, or attorney or authorized agent, to re-enter and re-possess the said premises at once, without notice, and to remove and put out the part of the second part and each and every other occupant

Ninth. Party of the first part hereby reserves the right to re-enter the aforesaid premises after the day of , 19 , and plant all ground to fall wheat unoccupied by crop.

Tenth. ADDITIONAL STIPULATIONS. It is further agreed between the parties to the within lease that .

WITNESS our hands. the day and year above written.

[Signatures.]

Executed in the presence of

[Signatures.]

MARYLAND.

1262. Lease, Statutory Form.

(Pub. General Laws, art. 21 § 63.)

THIS LEASE, made this day of , in the year , between , and , WITNESSETH: That the said doth lease unto the said , his personal representatives or assigns [*here describe property*], for the term of years, beginning on the day of , in the year , and ending on the day of , in the year , the said paying therefor the sum of dollars, on the day of , in each and every year.

WITNESS their hands and seals.

[SEAL.]

[SEAL.]

MASSACHUSETTS.

1263. Lease, With Taxes, Water Rates and Six Per Cent. of Betterment Tax.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between , of the first part, and , of the second part, WITNESSETH:

That the said party of the first part doth hereby demise and lease unto the said party of the second part [*description*]

To HAVE AND TO HOLD the same for the term of , beginning with the day of .

YIELDING AND PAYING therefor rent at the rate of dollars per annum, to be paid in equal payments, the first of such payments to be made on the day of , next, and at the same rate for any part of a unexpired at the legal termination of this lease.

And the lessor hereby covenant with the lessee and executors, administrators and assigns, that they shall peaceably hold and enjoy the said premises as aforesaid .

And the lessee for sel and assigns hereby covenant with the lessor and heirs and assigns that and executors, administrators and assigns will pay the said rent in manner aforesaid, and also all taxes, water rates and assessments whatsoever to which said premises or any part thereof may become liable during the said term, excepting, however, assessments for any permanent benefit or improvement to said premises under any betterment law or otherwise;* that in case of any such excepted assessment they will, after the same, or any part thereof, has become payable, pay to the lessor or heirs or assigns, during the remainder of said term and at the times above provided for the payment of the rent, an additional rent at the rate of six per cent. per annum on any sum or sums that may be paid by the lessor or heirs or assigns on account of such assessment; that they will not without the consent in writing of the lessor , or of heirs or assigns, assign this lease, nor underlet the whole or any part of said premises, nor make or suffer any alterations or additions in or to the same; that they will not make or suffer any waste, or any unlawful, improper, or offensive use of the said premises; that they will allow the lessor and heirs and assigns and their agents at reasonable times to enter upon said premises and examine the condition thereof and make necessary repairs; will keep all and singular the said premises in such repair as the same are in at the commencement of said term or may afterward be put in during the continuance thereof, reasonable use and wearing thereof and damage by fire or other unavoidable casualties only excepted, and at the end of said term will peaceably deliver up to the lessor or heirs or assigns the said premises, together with all future erections or additions upon or to the same, in such repair as aforesaid and vacant and unincumbered and in good and tenantable order and condition .

PROVIDED ALWAYS, and these presents are upon this condition, that in case of a breach of any of the covenants to be observed on the part of the lessee or of representatives, or in case the estate hereby created shall be taken

from or them by process of law, by proceedings in bankruptcy or insolvency or otherwise, the lessor or heirs or assigns may, while the default or neglect continues, or at any time after such taking by process of law and notwithstanding any license or waiver of any prior breach of condition, without any notice or demand enter upon the premises and thereby determine the estate hereby created; and may thereupon expel and remove, forcibly, if necessary, the lessee and those claiming under , and their effects.

BUT IT IS AGREED that in case of a determination of the estate hereby created by an entry for breach of the foregoing condition, the lessee shall indemnify the lessor or heirs or assigns for all loss and damage which or they may, during the residue of the term above specified, suffer by reason of such determination, whether through decreased rent of said estate or otherwise, and it is also agreed that if the buildings on the said premises shall be damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use and occupation, then and in such case the rent hereinbefore reserved, or a just and proportionate part thereof according to the nature and extent of the injury sustained, shall be abated until the said premises shall have been duly repaired and restored by the lessor or heirs or assigns, or, in case the said buildings shall be substantially destroyed, then, at the election of the lessor or heirs or assigns, the estate hereby created may thereupon be determined, .

IN WITNESS WHEREOF, the said parties hereunto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

[Signatures and seals.]

Signed and sealed in presence of

[Signatures.]

1264. Lease, With Taxes and Water Rates, for Manufacturing Property.

[As in preceding form to the *, continuing thus:] for or by reason of which they shall not be liable to make any payment; that they will not, without the consent in writing of the lessor , or of heirs or assigns, assign this lease, nor underlet the whole or any part of said premises; nor make or suffer any alterations or additions in or to the same; that they will not make or suffer any waste, or any unlawful, improper or offensive use of the said premises; that they will save the lessor and heirs and assigns, harmless and indemnified from and against all loss, liability or expense that may be incurred by reason of any accident with the machinery, hatchways, elevator, gas, water, or other pipes, or from any damage, neglect, or misadventure arising from, or in any way growing out of, the use, misuse, or abuse of the water, or from the bursting of any pipes, or from neglect in the use of coal-holes and covers, or in not removing snow and ice from the sidewalks or from the roof of the building; that they will keep whole and in good order all glass, pipes, faucets, water fixtures, machinery, etc., under their control and in their use, and leave the same in good condition at the termination of this lease, reasonable wear excepted; that they will allow the

lessor and heirs and assigns and their agents at reasonable times to enter upon said premises and examine the condition thereof and make necessary repairs, if not otherwise provided for; that they will keep all and singular the said premises in such repair as the same are in at the commencement of said term or may afterward be put in by the lessor or heirs or assigns, reasonable use and wearing thereof and damage by fire or other unavoidable casualties only excepted; and at the end of said term will peaceably deliver up to the lessor or heirs or assigns the said premises, together with all future erections or additions upon or to the same, in such repair as aforesaid and vacant and unincumbered and in good and tenantable order and condition.

PROVIDED ALWAYS, and these presents are upon this condition, that in case of a breach of any of the covenants to be observed on the part of the lessee, or of those claiming under , or in case the estate hereby created shall be taken from or them by process of law, by proceedings in bankruptcy or insolvency, or otherwise, the lessor or heirs or assigns may, while the default or neglect continues, or at any time after such taking by process of law, and notwithstanding any license or waiver of any prior breach of condition, without any notice or demand, enter upon the premises and thereby determine the estate hereby created; and may thereupon expel and remove, forcibly if necessary, the lessee and those claiming under and their effects.

BUT IT IS AGREED that in case the buildings on the said premises, or any part thereof, shall be damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and occupation, then and in such case the rent hereinbefore reserved, or a just and proportional part thereof, according to the nature and extent of the injury sustained, shall be abated until the said premises shall have been duly repaired and restored by the lessor or heirs or assigns, or in case the said buildings shall be substantially destroyed, then, at the election of the lessor or heirs or assigns, the estate hereby created may thereupon be determined.

IN WITNESS WHEREOF, the said parties hereunto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

[Signatures and seals.]

Executed and delivered in presence of

[Signatures.]

1265. Lease.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , by and between , and ,

WITNESSETH, that the said do hereby lease, demise, and let unto the said , [description of premises]

To HOLD for the term of , commencing the day of , A. D. one thousand nine hundred and , the said lessee or those claiming under h m, yielding and paying rent therefor, the sum of for each and every year, and after the same rate for any part of a year.

And the said lessee for h msel , executors and administrators, do hereby

covenant to and with the said lessor , heirs and assigns, that they will pay the said rent in equal sums of , the first of which payments shall be made on the day of , A. D. one thousand nine hundred and , and that they will pay rent after the same rate for such time as he the said lessee or those claiming under h m may hold the premises, that they will from time to time, upon request by the lessor , heirs or assigns, pay them such sum or sums of money as shall be equal to the amount of the taxes and duties, and water taxes, that shall be levied or assessed on the demised premises for each year and part of a year during the term aforesaid, and during such further time as the said lessee and those claiming under h m may hold the premises; that they will not suffer nor commit any strip or waste in the premises; that they will not assign this lease nor underlet the whole or any part of the premises to any person or persons; and that no alterations or additions shall be made during the term aforesaid, in or to the same without the consent of the said lessor or of those having estate in the premises being first obtained in writing, allowing thereof.

AND ALSO, that it shall be lawful for the said lessor and those having estate in the premises, at seasonable times to enter into and upon the same, to examine the condition thereof; and further, that he the said lessee and representatives shall and will, at the expiration of said term, peaceably yield up unto the said lessor or those having estate therein, all and singular the premises, and all future erections and additions to or upon the same, in as good order and condition, in all respects (reasonable wearing and use thereof and damage by fire and other unavoidable casualties excepted), as the same now are, or may be put into by the said lessor , or those having estate in the premises.

PROVIDED ALWAYS, and these presents are upon this condition, that if the said rent shall be in arrear, or the said lessee or representatives or assigns do or shall neglect or fail to perform and observe any or either of the above covenants hereinbefore contained which on their part are to be performed, then, and in either of said cases, the said lessor or those having estate in the said premises, lawfully may, immediately, or at any time thereafter, and while such neglect or default continues, and without further notice or demand, enter into and upon the said premises, or any part thereof in the name of the whole, and repossess the same as of former estate, and expel the said lessee and those claiming under h m and remove their effects (forcibly if necessary), without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant.

AND PROVIDED ALSO, that in case the premises, or any part thereof, shall during said term be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injuries sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use and habitation by the said lessor , or

these presents shall thereby be determined and ended at the election of the said lessor, or legal representatives.

IN TESTIMONY WHEREOF, the said parties have set their hands and seals on the day and year first above written, to this and to another instrument of like tenor and date.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

MICHIGAN.

1266. Lease — With Chattel Mortgage Security.

IT IS HEREBY AGREED, between , part of the first part, and , part of the second part, as follows: The said part of the first part, for and in consideration of the rents and covenants herein specified, do hereby let and lease to the said part of the second part the following described premises, situate and being in the of , in the county of , and state of Michigan, for the term of from and after the day of , A. D. 19 , on the terms and conditions hereinafter mentioned, to be occupied for .

PROVIDED, that in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said part of the first part, or certain attorney, to re-enter into and re-possess the said premises, and the said part of the second part, and each and every other occupant to remove and put out.

And the said part of the second part do hereby hire the said premises for the term of as above mentioned, and do covenant and promise to pay to the said part of the first part, the annual rent of dollars, in installments, to wit:

The first installment to be paid on the .

AND ALSO, that he , the said part of the second part, will, at own expense, during the continuance of this lease, keep the said premises and every part thereof in as good repair as when taken and will not assign this lease, or re-lease or sub-let said premises, or any portion thereof, to any person or persons whomsoever, without the written consent of the part of the first part, and, at the expiration of the term, will yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted.

And the said part of the second part do hereby covenant and agree that all goods, wares and merchandise, household furniture, fixtures or other property which are or shall be placed in or on said premises by shall be liable, and this lease shall hereby constitute a lien or mortgage on said property, to secure the rent due or to grow due on this lease. And do hereby authorize and empower the said part of the first part to, and the said part of the first part may, in case any default is made in the payment of the rent above specified, or any of the covenants herein contained are broken, enter upon said premises, or take any of said mortgaged property wherever the same may be found, and sell and dispose of the same in the same manner

as in the case of sale under chattel mortgage on default thereof (giving six days' notice of the time and place of such sale, said notice to be posted in public places in the said of), for the best price he can obtain for the same, and retain sufficient money to pay any rent due hereon, or to grow due hereon, together with the costs of such sale; and the said part of the second part hereby waive all benefit of any exemption law of this state in reference to the sale of said personal property for rent.

And the said part of the first part do covenant that the said part of the second part, on paying the aforesaid installments, and performing all the covenants aforesaid shall, and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

WITNESS our hand and seal this day of , A. D. 19 .

[Signatures and seals.]

STATE OF MICHIGAN, }
County of , } ss.

, being duly sworn, deposes and says that he is [or, is one of] the lessee and mortgagor named in the annexed lease with chattel mortgage security; that he has knowledge of the facts, and that the consideration of said instrument was actual and adequate, and that the same was given in good faith for the purposes therein set forth.

[Signature.]

Subscribed and sworn to before me, this
day of , 19 .

[Signature.]

1267. Lease of Farm With Lien on Produce.

THIS INSTRUMENT, made this day of , A. D. , by and between of the first part, and of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the rents and covenants herein specified, do hereby let and lease to said part of the second part the following described piece or parcel of land situate and being in the of , county of , and state of Michigan, to wit: [description] for the term of , commencing on the day of , A. D. , and ending on the day of , A. D. .

And for and in consideration of the aforesaid term of rent of the said premises, the said part of the second part do hereby hire the said premises for the term of as above mentioned, and do covenant and agree to pay to the said part of the first part, heirs, executors, administrators or assigns, the sum of dollars, lawful money of the United States of America, to be paid as follows, to wit:

And, as a further consideration of the aforesaid term of rent of the said premises, the said part of the second part do hereby covenant and agree to pay all taxes, whether state, county, township, school or road taxes, or any other taxes that may be imposed on the whole or any part of the said premises and deliver to the said part of the first part, heirs, execu-

tors, administrators or assigns, on the last day of each year, the proper and necessary receipts for all taxes that he may have paid during such year; and at all times to keep the buildings and fences on said premises in good order and repair, and that he will not sub-let the said premises or any portion thereof, nor assign nor transfer this lease to any person whomsoever, without the written consent of the said part of the first part, heirs, executors, administrators or assigns, indorsed hereon.

And for the purpose of securing the payment of the said rent above reserved and taxes, the said part of the second part hereby covenant and agree that the said part of the first part, heirs, executors, administrators and assigns, shall have a lien in the nature and to the effect of a chattel mortgage upon all the produce of the said tillable land, whether harvested or not, and the said part of the second part hereby sell and mortgage to the said part of the first part, heirs, executors, administrators and assigns, the said produce, and in case the said part of the second part shall fail or neglect to pay the same as above covenanted and agreed upon, the said part of the first part, heirs, executors, administrators and assigns, shall have the right and power to take possession of the said produce, wherever it may be found, and sell the same at private sale or public auction at the best prices he can obtain therefor after giving at least days' previous notice of the time and place of said sale, by posting a written or printed notice thereof in or more public places in the said of , and out of the money to arise from such sale thereof, if sufficient there shall be, to pay and retain the amount of said rent and taxes due, together with any and all costs and charges of such sale, and shall pay the surplus money (if any) to the said part of the second part.

The said part of the first part give the said part of the second part permission to cut on the wood land of said farm, the timber that may be necessary for keeping the buildings and fences in repair, but for no other purpose whatever, excepting for the firewood necessary to be consumed on the said premises , which must always be cleanly cut next adjoining the said tillable land, in strips of not to exceed rods in depth across the whole width of the said premises as far as the wood land shall extend, heaping and burning the brush.

And at the expiration of the said term of rent, the said part of the second part do covenant and agree to surrender and give up the said premises, together with the buildings and fences in good order and repair to the said part of the first part, heirs, executors, administrators or assigns. And should the said part of the second part fail in any of the foregoing covenants, conditions and obligations on part to be fulfilled, kept and performed, then this lease will become null and void, and the said part of the first part, , heirs, executors, administrators or assigns, may peaceably re-enter and take possession of the premises and property hereby rented, without any formal proceedings either at law or in equity, and the said part

of the second part hereby agree to pay to the said part of the first part, heirs, executors, administrators or assigns, all damage and loss, which they or any of them may suffer, by reason of any failure on the part of the part of the second part to faithfully carry out, observe and perform all the terms, covenants and conditions hereinbefore set forth.

IN WITNESS WHEREOF, the parties to this instrument have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

1268. Mining Lease.

THIS INDENTURE, made this day of , A. D. 19 , between , part of the first part, and , party of the second part, WITNESSETH:

1st. THAT the part of the first part, in consideration of the sum of one dollar to in hand paid by the part of the second part, the receipt of which is hereby acknowledged, and in further consideration of the rents and royalties to be paid and the covenants and conditions to be kept and performed, as herein named, by the part of the second part, do hereby, LET, DEMISE and LEASE unto the said part of the second part, the following tract or parcel of land, situated in the county of , state of , and more particularly known and described as [description] for the term of twenty (20) years from and after the date hereof; for the purpose only of exploring for and mining, taking out and removing therefrom the merchantable shipping , which is, or which hereafter may be found on, in or under said land, together with the right to construct all buildings, make all excavations, openings, ditches, drains, railroads, wagon roads, and other improvements upon said premises which are, or may become suitable or necessary for the mining and removing of from said premises, with the right to cut and use such timber thereon, except pine timber, as may be necessary for the construction of buildings, and for the other usual purposes of such mining operations, and for their own fuel only (other than for smelting purposes) by first estimating and paying for the timber and fuel the full stumpage value thereof, special care being exercised to clear up and remove all combustible debris in order to prevent any fires.

2d. IT IS HEREBY AGREED, that the said part of the second part may put in engines and machinery, build roads and do such other things on said premises as may be necessary or usual to carry on such mining operations; all such engines, machinery, buildings, improvements, so put up or erected and material found on the land shall form part of the realty, it being understood that the part of the second part, on the termination of this lease, by paying up any arrears which may be or become due, owing or payable on this lease to said first parties, may remove within ninety (90) days after

such termination of this lease, such buildings, engines, machinery and improvements: PROVIDED, that all mines of shall be opened and worked by said second part, and in such manner only as is usual and customary in the skillful and proper mining operations of similar character, when conducted by the proprietors themselves, and so as not to do, cause or permit any unnecessary or unusual permanent injury to the same, or inconvenience or hindrance in the subsequent operating of the same mines, and at the termination of this agreement, whether by the acts of the parties, or either of them, or by limitation or otherwise, shall be left in good order and good workmanlike condition; and in the working of said mines, the part of the second part shall deposit all earth or rubbish at such places and in such manner as will not obstruct or embarrass the future operation of said mines; and said part of the second part shall not remove or impair any supports, timbers, frame work or shafts necessary or proper for the use and maintenance of such mines or the approaches thereto, nor shall any tramroads, railroad tracks, ditches or improvements of a permanent nature made by said part of the second part be impaired, removed or destroyed by said part of the second part at the termination of this lease.

3d. The said part of the second part shall pay to the part of the first part a royalty or rental on all removed from said premises during the existence of this lease, of cents per gross ton, each ton to be reckoned at two thousand two hundred and forty (2240) pounds, avoirdupois . Payments of such royalty or rental shall be made quarter-yearly, as follows: On the day of January, April, July and October in each and every year, commencing , for the , removed from said premises during the quarter year immediately preceding said dates, at the , or to such persons as the part of the first part may from time to time designate; and the part of the second part shall, at the beginning of each month, transmit to the part of the first part an exact and truthful statement of the amount of removed during the month preceding, verified by the oath of some one having knowledge of the facts, and the so taken by the part of the second part, from said land, shall be weighed by the railroad company transporting the same from said land, which weights shall prima facie determine the quantity as between the parties hereto, the right, however, being conceded to the parties of the first part, to inspect, review and test the correctness of said railroad company's scales and weights, at any time, and in such manner as they may see fit to adopt, it being understood that any errors in these respects, when ascertained, shall be recognized and corrected in their accounts. And the part of the first part shall at all times have, possess and hold a lien upon all the mined and on all improvements made on said premises as security for any unpaid balance of rents, royalties or taxes due and payable under this lease, such balances being deemed and to be treated as balances of purchase money, and which lien may be enforced against such property in like manner as liens conferred by chattel mortgages

are, or may be entitled to be enforced under the laws of the state in which said lands are situated.

4th. The part of the second part shall hereafter pay to the part of the first part, in quarter-yearly installments, a royalty or rental on not less than thousand tons , during the existence of this lease, whether the same be mined or not, and such payments so made shall be applied on the payments for royalty or rental next becoming due under this lease for mined and shipped in excess of the said thousand tons per year, the first of such quarter-yearly payments to be made on the day of , 19 , and thereafter to be payable quarter-yearly as above stated; and the part of the second part shall each and every year take out and remove as much in excess of the annual minimum tonnage aforesaid as can be mined and removed profitably, paying therefor at the quarter dates aforesaid for each and every ton of so mined and removed.

5th. The part of the second part agree to pay all taxes, general or special, upon the land so demised, which may be assessed or become due, either against said lands and the improvements thereon, or the product thereof, or any personal property at said mines, from and after the date hereof, during the continuance of this lease, and agree to furnish to the part of the first part, within thirty (30) days from the date such taxes or levies become due or payable, properly executed receipts for the same, duly signed by the officer lawfully authorized to collect and receipt for such taxes or levies and at the termination of this lease agree to quietly and peacefully surrender the possession of said land and premises to the part of the first part.

6th. IT IS EXPRESSLY AGREED, that the part of the second part shall not assign or transfer this lease, or any part thereof, without the written consent of said first part; and the part of the second part shall have the right at any time to terminate this agreement, in so far as it requires the part of the second part to mine on said lands, or to pay a royalty therefor, by giving ninety (90) days' written notice to the part of the first part, either in person or by mail, and in case notice is given by mail, it may be addressed to the part of the first part at their respective addresses above named, the part of the second part paying rent or royalty for any part of a year this lease shall remain in force, at the rate above agreed and set forth, and thereupon the within lease and demise shall terminate, and all arrearages and sums which may be due under the same, up to and including the date of its determination, as set forth in such notice, shall be paid.

7th. The part of the second part agree that when this lease shall, for any cause, terminate, said part will enter, or cause to be entered, a certificate of that fact upon the proper book of record in said county, provided this lease shall have been recorded there, and will execute or cause to be executed such releases or assignments, including the recording of the same, as may be necessary to clear the record and revest said first part of all rights and title given or acquired under this lease. It is further provided, and the

present lease is granted under express condition, that, if the rent hereby reserved (the said royalty being treated as rent) or any part thereof, or the said taxes, shall be and remain unpaid after the days and times when, by the preceding covenants, the same should be paid (and if the same remains in default for more than sixty days), or in the event of the termination of the foregoing lease and demise, as hereinbefore provided, or in case the part of the second part shall fail to keep or perform any of the covenants or conditions herein expressed to be kept or performed on part, then, and from thenceforth, and in either of these events, it shall be lawful for the part of the first part, at their option, into and upon the said demised premises, with or without any previous notice or process whatever, to re-enter, and the same to have and possess again, as of their first and former estate, and the part of the second part, and all persons claiming under said part, wholly to exclude therefrom.

8th. IT IS HEREBY EXPRESSLY AGREED, that the part of the second part shall be responsible for any fires or damage that may occur to said lands or timber, except such as may clearly occur by the acts of strangers or act of God; the parties of the first part reserving to themselves and their agents the right at any time to enter upon said premises or any part or parts thereof, to inspect and survey the same, and measure the quantity of that may be therein or thereon or that shall have been mined or removed therefrom, not unnecessarily or unreasonably hindering or interrupting the works or operation of the part of the second part; also reserving the right to grant to any person or corporation the right of way for any railroad or wagon road over or across said lands, to be cut or constructed in a manner not unreasonably to interfere with the improvements and mining operations as carried on at the time on said premises; and the said part of the first part further reserve the right to sell, cut and remove any timber on said lands not contracted for by said second part, together with the usual rights and privileges of lumbering, not inconsistent with the necessary rights of the part of the second part, herein mentioned.

9th.

The covenants, agreements and conditions of this lease shall run with the land, and be binding upon the heirs, executors, administrators, successors or assigns of each and all the parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

1269. Lease Note.

No., A. D.
 On or before, after date,, promise to pay to,
 order, dollars, payable as follows:
 dollars, on the execution and delivery of this note, and at

with exchange, and interest at the rate of per cent. if paid at maturity; if not paid at maturity, then with interest at the rate of per cent. per annum from the date hereof until paid.

The above note is given for the rent of [description] this day received of said , for the term of . And it is hereby provided, that upon the payment of said rent and interest, in the manner above stated, at or before maturity, said will sell to said the said property, for and at the sum of dollars, and execute to said a bill of sale of the same.

[Signature.]

1270. Lease for Oil or Gas.

IT IS HEREBY AGREED, between , part of the first part, and , part of the second part, as follows: The said part of the first part, in consideration of the rents and covenants herein specified, do hereby LET AND LEASE to the said part of the second part, for the purposes herein specified, and with the exclusive right of drilling and operating for petroleum oil and gas, until this lease is surrendered, the following described premises, situated and being in the of , county of , and state of Michigan, to wit: [description]

PROVIDED, that in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said part of the first part, certain attorney, heirs, representatives and assigns, to re-enter into, re-possess the said premises, and the said part of the second part, and each and every other occupant, to remove and put out.

And the said part of the second part do hereby hire the said premises for the purposes herein specified, and do covenant and promise to pay to the said part of the first part, representatives and assigns, for rent of said premises as follows:

1. Until the completion of a well producing oil or gas in sufficient quantities to utilize, the sum of dollars per annum, payable quarterly, on the first days of , , , and , in each year.

2. After the completion of such a well, one barrel of every barrels of petroleum oil obtained or produced on or from said premises and the sum of dollars per annum for each gas well producing gas in marketable quantities. Payments and settlements to be made quarterly on the dates named in the last paragraph or oftener at the option of the part of the second part,

The part of the first part grant to the part of the second part the right of obtaining and using from the premises hereby leased, sufficient water for all necessary purposes, but not from wells now on said lands; also the right of way over and across said premises, the exclusive right to lay pipes thereon to convey oil and gas, and the right to bring upon said premises, to erect and to remove, any machinery or fixtures required for purposes of this lease.

AND IT IS FURTHER AGREED, that no well shall be bored or oil stored nearer

than three hundred feet to any dwelling-house or barn now on said premises, except with the consent of the part of the first part.

FURTHER, that the part of the second part may at any time surrender this lease by delivering to the part of the first part a written notice of such surrender, and paying all sums due up to that time; and after such surrender the said part of the second part shall have no further liability hereunder.

The covenants, conditions and agreements, made and entered into by the several parties hereto, are declared binding on their respective heirs, representatives and assigns.

WITNESS our hands and seals this day of , 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

MINNESOTA.

1271. Farm Lease.

THIS AGREEMENT, made this day of , 19 , by and between , party of the first part, lessor, and , of the township of , county of , state of Minnesota, party of the first part, lessee ,

WITNESSETH, that the said party of the first part, in consideration of the rents and covenants hereinafter mentioned, does hereby demise, lease and let unto the said party of the second part, and the said party of the second part does hereby hire and take from the said party of the first part the following described premises, situated in the county of , and state of Minnesota, viz: [*description*] in section number , township number , range number , containing acres, be the same more or less, of which described premises the second party hereby agrees to plow and put into crops not less than acres each year during the continuance of this lease.

To HAVE AND TO HOLD, the above rented premises, unto the said second party, heirs and assigns, subject to the conditions and limitations hereinafter mentioned, for and during the full term of years, from and after the day of , 19 , the terms of this lease ending the day of , 19 .

And the said second party agrees to and with the said first party, to pay as rent for the above mentioned premises, for and during the term of this lease, the sum of dollars, on the day of , 19 , at , and in addition to such amount, \$ per acre for each and every acre cultivated on above described premises, in excess of acres , and the said second party further agrees that in addition to the rent before specified will also pay all taxes that may be assessed against said premises for the year 19 , and pay the same before the same become delinquent.

AND IT IS FURTHER AGREED, by and between the parties, as follows: that

should the said second party fail to make the above mentioned payments as herein specified, or to pay any of the rent aforesaid when due, or fail to fulfill any of the covenants herein contained, then and in that case said first party may re-enter and take possession of the above rented premises, and hold and enjoy the same without such re-entering working a forfeiture of the rents to be paid by the said second party for the full term of this lease. That if the said first party sells said premises during the life of this lease and before the crop is in the ground, and desires to give possession to the purchaser, that the second party will forthwith surrender possession of said leased premises upon the payment to _____, of \$ _____ per acre for each acre of said premises newly plowed by said second party at the time said possession is demanded; if sold after the crop is in, then said second party shall have the right to remove such crop when ready to be harvested. That if said first party sells said premises during the term of this lease, the purchaser may at any time enter upon the leased premises for the purpose of plowing, breaking more land, summer-fallowing, cultivating or otherwise improving any part of said premises not in actual cultivation by said second party, and without such entry working any forfeiture of the rents herein agreed to be paid. That if said second party remains in possession of said premises after the expiration of the term for which they are hereby leased, such possession shall not be construed to be a renewal of this lease, but to be a tenancy at the will of the said first party, which may be terminated upon ten days' notice, given by the said first party in writing, either delivered to second party or sent to _____ in a sealed envelope, duly stamped and directed to _____ at _____, which is hereby declared by _____ to be _____ usual post-office address.

And the said second party also covenants and agrees to and with the said first party, not to assign this lease or underlet the above rented premises or any part thereof, without first obtaining the written consent of the said first party and that _____ will, at the expiration of the time as herein recited, quietly yield and surrender the aforesaid premises to the said first party, his heirs or assigns, in as good condition and repair as when taken, reasonable wear and tear and damage by the elements alone excepted. Said second party also covenants and agrees to cultivate the hereby leased premises in a careful and husband-like manner, and to maintain and keep up the fences so as to protect all crops from injury and waste, and to protect the fruit and shade trees thereon, and to cut no green trees and to commit no waste or damage on said real estate and to suffer none to be done; and to keep up and maintain in good repair all buildings, stables, cribs, fences and improvements on said farm; and further agrees not to remove any straw or manure from said farm, but to spread upon said premises all manure made thereon.

And the said first party covenants that the said second party, on paying the rent and performing the covenants aforesaid, shall peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

To secure the payment of the rents herein specified and the faithful performance and strict fulfillment of all the covenants of said second party in this lease contained, said second party does hereby expressly mortgage unto said first party all crops growing or grown on said premises during the term of this lease, and does hereby expressly authorize and fully empower said first party in the case of any default on the part of said second party in paying said rent or in performing any of the covenants in this lease, to seize and take possession of said mortgaged property at once, and sell the same at public auction, with notice as provided by law, and out of the proceeds of said sale, to pay and discharge all rents, damages and expenses which may at the time be due and incurred, and pay over to said second party the surplus money arising from such sale.

IN TESTIMONY WHEREOF, both parties have herenunto set their hands and seals the day and year hereinbefore written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

MISSOURI.

1272. Lease.

THIS INDENTURE, made this day of , 19 , by and between , part of the first part, and , part of the second part:

WITNESSETH, that the said part of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said part of the second part, ha demised and leased to the said part of the second part, all those premises situate, lying and being in the of , and state of , known and described as follows, to wit: [*description*]

To HAVE AND TO HOLD, the said above described premises, with all the privileges and appurtenances belonging to the same, unto the said part of the second part, from the day of , A. D. 19 , to the day of , A. D. 19 .

And the said part of the second part, in consideration of the leasing of the premises aforesaid, do covenant and agree with the said part of the first part, to pay to the said part of the first part, as rent for the said premises, in amount and manner as follows, to wit:

AND IT IS FURTHER AGREED, by the said part of the second part, that neither nor legal representative will under-let said premises, or any part thereof, or assign this lease without the written assent of the said part of the first part had and obtained thereto; that will at all times during the term of this lease at own expense (except so far

as may be hereinafter agreed to the contrary), maintain and repair all the buildings and fences belonging to said premises, or which may at any time during said term be erected thereon; and the said premises, and every part thereof, in as good repair as they shall be in at the commencement of the term of this lease, will peaceably deliver up to the said part of the first part, heirs, executors, administrators and assigns, at the termination of this lease, loss by fire, storms, or unavoidable accident, and ordinary wear and tear only excepted.

IN WITNESS WHEREOF, the said parties have hereunto, and to a duplicate copy hereof, set their hands the day and year first above written.

[Signatures.]

1273. Lease of Farm.

THIS INDENTURE, made this day of , A. D. 19 , by and between of the of , and state of , part of the first part, and , of the of , and state of , part of the second part:

WITNESSETH, that the said part of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said part of the second part, executors, administrators and assigns, has demised and leased to the said part of the second part, all those premises, situate, lying and being in the of , state of , known and described as follows, to wit: [*description*]

To HAVE AND TO HOLD the said above described premises, with all the privileges and appurtenances belonging to the same (except such as hereinafter mentioned as reserved for the use and benefit of said part of the first part), unto the said part of the second part, executors, administrators and assigns, for a term of , commencing on the day of , A. D. 19 , and ending on the day of , A. D. 19 .

And the said part of the first part makes the following reservation, to wit: Reserving .

And the said part of the second part, in consideration of the leasing of the premises aforesaid by the said part of the first part to the said part of the second part, do hereby covenant and agree with the said part of the first part, heirs, executors, administrators and assigns, to pay the said part of the first part, as rent for the said premises, in amount and manner, as follows, to wit: [*description*]

AND IT IS FURTHER AGREED, by the said part of the second part, that neither nor legal representative will under-let said premises, or any part thereof, or assign this lease, without the written assent of the said part of the first part had and obtained thereto; that will at all times during the term of this lease, at own expense (except so far as may be hereinafter agreed to the contrary), maintain and repair all the buildings

and fences belonging to said premises, or which may at any time during said term be erected thereon; and is further agreed by said part of the second part, that if default shall be made in the payment of any rent, whensoever the same shall become due by the terms of this lease, the said part of the first part or legal representatives shall be entitled to the possession of said premises; and possession thereof shall be peaceably surrendered by said part of the second part on demand therefor; and the premises, and every part thereof, in as good repair as they shall be in at the commencement of the term of this lease, will peaceably deliver up to the said part of the first part, heirs, executors, administrators and assigns, at the termination of this lease, loss by fire, storm and unavoidable accident, and the ordinary wear and tear only excepted.

IN WITNESS WHEREOF, the said parties have hereunto, and to a duplicate copy hereof, set their hands the day and year first above written.

[Signatures.]

PERMISSION TO SUB-LET.

, the lessor named in the foregoing lease, herewith authorizes and permits the lessee named in said lease to sub-let the premises therein leased, or any part thereof, to , the said lessee still being holden responsible for the faithful performance and fulfillment of all the covenants and agreements in said lease made by .

Dated , 19 .

[Signatures.]

1274. Lease of Personal Property — Monthly Rent With Right to Purchase.

Town , county , state , postoffice , date, .

THIS IS TO CERTIFY, that I have received and rented from , one , No. with the usual accessories, the value of which is dollars, for the use of which I agree to pay the sum of dollars, in advance and dollars per month for months, payable on the day of each month, following , 19 . Payments to be made at the office of said .

I ALSO AGREE, that said , or any part thereof, shall not be removed for a greater period than three days from my residence No. street, in the city of , state of , without the written consent of the , and to give the said immediate notice in case the property is levied upon or becomes liable to be disturbed from any cause whatever.

AND I FURTHER AGREE, that if any default be made in the payment of rent as above specified, or in the performance of any other of the above agreements, that this lease, at the option of said shall wholly cease and terminate, and I will relinquish my possession of, and all claims in and to said property, and deliver the same to the said or agent, in as good order as

when received, the reasonable wear and tear excepted, and the said or agent, may, without notice, enter my premises, and take possession of and remove the same, with or without process of law, no title being acquired by me to said property or any part thereof.

IT IS ALSO FURTHER AGREED, that I may at any time within said rental term, purchase the said machine and apparatus by paying the above valuation therefor, and then and in that case only, the rent therefor paid shall be deducted therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of _____, 19 .

[Signature and seal.]

In presence of

[Signature.]

Endorsed:—

Lease No.

Name
 Occupation
 Residence
 Business Address
 County State
 Date 19 ..
 Style
 Machine No. Value, \$
 Terms: \$ cash and \$ per
 Month

In consideration of one dollar to me in hand paid, I hereby guarantee the faithful performance of the within lease.

..... [SEAL]
 Residence

In consideration of the sum of one dollar to in hand paid, the within lease and all my interest therein is transferred to
 [SEAL]
 Residence

| DATE OF PAYMENTS. | | COLLECTOR'S SIGNATURE. | DOLLARS. | CENTS. |
|-------------------|----|------------------------|----------|--------|
| | 19 | | | |
| | 19 | | | |
| | 19 | | | |
| | 19 | | | |

NEW HAMPSHIRE.

1275. Lease of Farm.

THIS INDENTURE, made the day of , in the year of our Lord 19 , between , in the county of , in the state of New Hampshire, and :

WITNESSETH, that in consideration of the rents and covenants hereinafter reserved and contained, on the part of the said to be paid and performed, the said doth lease to the said [description] situate in said , now in the possession of , with all the privileges and appurtenances to the same belonging.

TO HAVE AND TO HOLD the same to h from the , the term of years next ensuing; paying therefor yearly, during the said term, to the said , h heirs and assigns, the yearly rent of dollars, to be paid by equal payments, on the in each year—the first payment to be made on the day of next.

And the said agrees with the said that the said shall peaceably possess the said premises during said term, without the lawful interruption or eviction of any person whatsoever.

And the said agrees that he will pay to the said the said yearly rent of dollars, at the days and times above mentioned; and will at all times during said term, seasonably pay and discharge all taxes which shall be assessed upon said premises; and will at all times during said term, at h own expense, maintain and repair all the buildings and fences belonging to said premises, or which may at any time during said term be erected thereon; and the same premises, and every part thereof, in good repair as they now are, will peaceably deliver up to the said , h heirs and assigns, at the termination of this lease.

IN WITNESS WHEREOF, we have hereunto interchangeably set our hands and seals, the day and year aforesaid.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

SOUTH CAROLINA.

1276. Agricultural Lease and Lien for Rent and Surplus.

THE STATE OF SOUTH CAROLINA, }
County of . }

THIS INDENTURE, between , the lessor , and , the lessee , WITNESSETH, that the lessor agree to lease to the lessee the tract of land situated in said county, containing about acres, known as , for agricultural purposes.

TO HOLD the same to the lessee from the day of , A. D. 19 . to the day of , A. D. 19 . And said lessor agree to make

advances to the lessee during the current year in money or supplies to be used and expended in the cultivation of such soil; the said advances not to exceed in all the sum of dollars.

And the lessee, on part, agree to pay to the lessor, as rent for the same, which shall become due, payable and deliverable on or before the day of , A. D. 19 , at .

And it is agreed that, to secure payment of said rent, and the repayment of said advances, the lessor shall have the agricultural lien on the crop produced on said land during the year, and all remedies to enforce the same as provided by law.

The lessee agree to take good care of the premises, and to deliver possession of same at the expiration of the lease, without further notice. This agreement to bind the parties, their heirs, executors and administrators.

WITNESS our hands and seals, the day of , A. D. 19 .

[Signatures and seals.]

In presence of

[Signatures.]

1277. Lease.

THE STATE OF SOUTH CAROLINA.

THIS INDENTURE, made and concluded at , this day of , nineteen hundred and , by and between , the lessor of the first part, and , the lessee of the second part,

WITNESSETH, that the said ha granted and leased, and by these presents do grant and lease, unto the said , the [description], known as No. , with all the appurtenances thereto belonging;

TO HAVE AND TO HOLD, the said premises unto the said , executors, administrators and assigns, for the full term of , commencing on the day of , 19 , and ending on the day of , 19 , yielding and paying therefor at the rate of per , payable .

AND the said , executors, administrators and assigns, for and in consideration of the above letten premises, do covenant and agree to pay to the said , executors, administrators and assigns, the above stipulated rent, in the manner herein required. And it is further agreed that unless month's notice, in writing, be given, previous to the expiration of the period herein specified by the lessor to the lessee, of desire to have possession of the premises, or to change the conditions of the lease after the expiration, or the like notice be given by the lessee to the lessor of intention to vacate the premises after such expiration; then it is hereby agreed that this lease will be considered as extended and binding in all its provisions for after such expiration; and so continue from until such notice be given by either party previous to the expiration of such extended term. But the destruction of the premises by fire, or by any other casualty, shall terminate this agreement. And it is mutually understood that the lessee shall make no repairs at the expense of the lessor, and any alterations or im-

provements desired by the lessee at own cost, must be done under the written sanction of the lessor, and all such alterations or improvements shall be surrendered to the lessor on the lessee's removal. The lessee shall make good all breakage of glass, and all other injuries done to the premises during tenancy, excepting such as are produced by natural decay and unavoidable accidents. And it is also agreed that the said shall not convey this lease, or underlet the premises, without the written consent of the said.

AND it is further stipulated and understood by the parties to these presents, that if month's rent shall at any time be in arrear and unpaid, the lessor shall have the right to annul and terminate this lease, and it shall be lawful for to re-enter and forthwith repossess all and singular the above granted and leased premises without hindrance or prejudice to right to distrain for all rent unpaid at such period.

AND lastly, it is agreed, that should the said assign, transfer, sell, remove or in any manner dispose of the goods and chattels within the above leased premises then the entire amount of rent that would accrue for shall be considered as due and payable, and the lessor shall be vested with the same rights as though the entire leased term had expired; but payment for the same shall entitle the said, executors, administrators and assigns, to all rights of possession to transfer (as provided for in this lease) for the unexpired term.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

In the presence of

[Signatures.]

UTAH.

1278. Lease.

THIS INDENTURE, made the day of, in the year of our Lord nineteen hundred and, between, of, county of, state of, part of the first part, and, of, the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned and reserved to be paid, kept and performed by the said part of the second part, executors, administrators and assigns, ha remised, leased, let, and by these presents do remise, lease and let unto the said part of the second part, executors, administrators and assigns, all those premises situate, lying and being in the of, county of, and state of, and particularly described as follows, to wit: [description]

TO HAVE AND TO HOLD, the said premises, with the appurtenances, unto the said part of the second part, executors, administrators and assigns, from the day of, A. D. 19, for and during and until the day of, A. D. 19, a term of.

And the said part of the second part, in consideration of the leasing of the premises aforesaid by the said part of the first part to the said part of the second part as aforesaid, do covenant and agree with the said part of the first part, heirs, executors, administrators and assigns, to pay the said part of the first part, heirs, executors, administrators and assigns, as rent for the said remised premises the sum of dollars, in lawful money of the United States of America, payable in sums of dollars per month, monthly in advance, upon the day of each and every month, for each and every month during said term.

And the said part of the second part hereby covenant and agree with the said part of the first part specifically as follows, to wit:

First. That at the expiration of the time in this lease mentioned will yield and deliver up the said remised premises to the said part of the first part in as good order and condition as when the same were entered upon by the said part of the second part, reasonable use and wear thereof and damages by the elements excepted.

Second. That neither nor legal representatives will let or underlet said premises or any part thereof, or assign this lease without the written assent of the said part of the first part first had and obtained thereto.

Third. That if the rent above reserved, or any part thereof, shall be unpaid on the day whereon the same is due and payable, and for days thereafter; or if any default shall be made in any of the covenants herein contained to be kept by the said part of the second part, executors, administrators or assigns, it shall and may be lawful for the said part of the first part, heirs, executors, administrators, agent, attorney or assigns, the said remised premises and every and any part thereof, either with or without legal process, and without giving notice to quit, to re-enter, and the same again to repossess and enjoy as in first and former estate.

Fourth. To pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the said part of the first part.

And the said part of the first part hereby covenant and agree with the said part of the said second part specifically as follows, to wit:

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

VIRGINIA.

1279. Lease, Statutory Form.

(Code of Va., § 2440.)

THIS DEED, made the day of , in the year , between (here insert the names of parties), WITNESSETH: That the said doth (or

do) demise unto the said _____, his personal representatives and assigns, all, etc. (here describe the property), from the _____ day of _____, for the term or _____, thence ensuing [*] yielding therefor during the said term the rent of (here state the rent, and mode of payment).

WITNESS the following signature and seal (or signatures and seals).

WASHINGTON.

1280. Lease.

THIS INDENTURE, made this _____ day of _____, A. D. 19 _____, between _____, the part of the first part and _____, part of the second part,

WITNESSETH, that the said part of the first part do by these presents lease, demise and let unto the said part of the second part the following described premises, situate in the county of _____, state of Washington, to wit: [description], with the appurtenances, for the term of _____ from the _____ day of _____, 19 _____, at the rent of _____ dollars, payable in gold coin of the United States of America, in advance on the _____ day of each and every month during said term, at _____.

AND IT IS HEREBY AGREED, that in case of default in any of the payments herein provided to be made, or in case of any strip or waste committed or suffered upon said premises, it shall be lawful for the said part of the first part to re-enter said premises and remove all persons therefrom; and said part of the second part do hereby covenant, promise and agree to pay the said part of the first part the said rental at the times and in the manner hereinbefore provided; and not to sublet the whole or any part of said premises without the written consent of the said part of the first part, nor to assign this lease, or any part thereof, without said written consent. And at the expiration of said term the said part of the second part agree to quit and surrender possession of the said premises in as good a state and condition as reasonable use and wear thereof will permit, damage by the elements excepted.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed and sealed in the presence of

[Signatures.]

WEST VIRGINIA.

1281. Lease, Statutory Form.

(Code of W. Va. § 3051.)

[As in form 1279 to *, and from thence as follows:] the said _____ (the lessee) paying to the said _____ (the lessor) therefor during the said term, the rent of (here state the rent, and mode of payment).

WITNESS, ETC. [as in form 1279.]

CHAPTER XXXVIII.

LETTERS OF CREDIT.

LETTERS OF CREDIT are of two kinds, general and special. A special letter of credit is addressed to a particular individual by name, and is confined to him, and gives no other person a right to act upon it. A general letter, on the contrary, is addressed to any and every person, and, therefore, gives any person to whom it may be shown, authority to advance upon its credit. A privity of contract springs up between him and the drawer of the letter and it becomes, in legal effect, the same as if addressed to him by name.

The language of a letter of credit should be well considered in reference to the point whether the writer intends to confine it to one or more transactions amounting to a specified sum, and beyond that extent, to cease, or whether he will allow it to stand as a continuing guaranty, so that the person for whose benefit it is given may continue to make new transactions under it, by paying what he first incurs.

If the writer desires that notice should be given him of transactions had under the guaranty, it is best to express that condition in the letter. If expressed, the condition must be steadily pursued. There is some conflict of authority as to whether notice is necessary, if not required by the tenor of the letter.

In order to render the writer liable, the terms of the letter must be strictly pursued. If it specifies the amount or the time of credit, he cannot be held for a greater amount, or for a debt incurred at a longer credit.

Merchandise letters of credit are issued by banking houses on their correspondents, usually in distant countries, to aid in the purchase and import of large amounts of merchandise. These are usually accompanied by special agreements made by the one in whose favor the letter is issued. On the arrival of the goods, they are usually committed for sale to the importer, who gives the bankers a trust receipt or other special agreement in regard to them.

Circular notes, as they are called, are a still more recent invention, and are now used extensively both in this country and in Europe, but by travelers almost exclusively. They are generally, but not always, for specific sums, and are in fact letters of credit which a banking house gives to a traveler, and which are made available, on presentation to any one of the agents or correspondents of the house, in a long list of places, the names, both of the places and of the agents in them, being usually stated in the instrument itself. A principal object of this is to enable a traveler to supply himself with funds frequently and at various points, and thus to prevent the necessity of carrying with him large sums of money, or depositing them at the principal centers of business along his route. These circular notes are usually transferable by indorsement, and are perhaps more like bills of exchange than ordinary letters of credit, but are not the same, nor would they be in all respects governed by the law of negotiable paper.

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1282. General Letter of Guaranty.

I HEREBY guarantee to any person advancing money or selling goods to A. B., not exceeding dollars, the payment thereof, at the expiration of the credit which shall be given. [Signature.]

[Date.]

[Address to A. B.]

1283. General Letter of Credit and Guaranty.

SIR.—We hereby agree to accept, and pay at maturity, any draft or drafts on us at sixty days' sight, issued by Messrs. C. D. & Co., of your city, to the extent of \$25,000, and negotiated through your bank. We are [etc.]

[Date.]

[Signature.]

[Address.]

I hereby guarantee the due acceptance and payment of any draft issued in pursuance of the above credit. [Signature of guarantor.]

To A. B.:

1284. Special Letter.

SIR.—I will be responsible for goods [*limiting the kind, if desired*] to be sold [*or, money to be lent*] by you to C. D., to an amount not exceeding in the aggregate dollars [*or, if desired to give a continuing guaranty, not exceeding an indebtedness of dollars at any one time*].

[Date.]

[Signature.]

1285. Special Letter of Credit.¹

MESSRS. W. B. & Co.:

NEW YORK, , .

GENTLEMEN.—At the request of our mutual friends, Messrs. S. & T., and on their account, we beg leave to open a credit for £ , say pounds sterling, uncovered at any one time, in favor of Mr. J. D., to be negotiated by him in , by drafts on you at days' sight. This credit to expire on , . You will of course keep Messrs. S. & T. advised as the credit is used, and they will attend to placing you in funds.

We are, gentlemen, your obedient servants,

B. B. & Co.

1286. Circular Note or Traveler's Letter of Credit.

A. B. & BROTHERS; CIRCULAR LETTER OF CREDIT.

No. . £500; expiring , . NEW YORK, , .

GENTLEMEN.—This will serve to advise you that we have opened a credit of five hundred pounds sterling in favor of Mr. A. B. C., who will present the form of identification provided by us, and whose drafts at sight on the Bank of London, Limited, London, England, to the amount not drawn, we engage will meet with due honor if negotiated within months from this date.

The amount and particulars of each payment must be indorsed hereon, and the negotiation of a draft by you will be your guarantee that the requisite indorsement has been made.

Each draft must specify that it is drawn against A. B. & Brothers' letter of credit No. .

We are, gentlemen, faithfully yours,

To our correspondents [*usually naming them*]. A. B. & Brothers.
Not exceeding five hundred pounds.

¹See Berckhead v. Brown, 5 HILL, 634.

PAYMENTS.

| Date. | By whom paid. Paye par. | Amounts written in letters. Commes en lettres. | In figures. En chiffres. |
|-------|----------------------------|---|-----------------------------|
| | | | |

NEW YORK, , .

TO OUR CORRESPONDENTS:

For the purpose of identification, we beg to call your attention to the signature below of Mr. A. B. C., in whose favor we have issued our circular letter of credit No. , expiring , .

[Signature.] A. B. C.

A. B. & Brothers.

1287. Merchandise Letter of Credit.

A. No. , OFFICE OF A. B. & Co., NEW YORK, , .

Messrs. E. F., of Hong Kong, China, are hereby authorized to value on A. B. & Co., London, England, in sterling, payable, London, at sixty days, three, four, or six months' sight, for account of Messrs. G. H. & Co., of New York, for any sum or sums not exceeding in all pounds sterling [£], for cost of merchandise to be shipped to New York.

Bills at six months' sight are authorized only against merchandise shipped by sailing vessels.

The bills of lading to be made to the order of A. B. & Co., London.

This shipment must be completed and the bills drawn within months from this date, and the advice of them to A. B. & Co., London, in duplicate, must be accompanied by bills of lading with abstract of invoice indorsed thereon, on receipt of which documents in order the bills will be duly honored.

All bills drawn under this credit must be indorsed hereon.

And the said A. B. & Co. hereby agree with the drawers, indorsers, and *bona fide* holders of bills drawn in compliance with the terms of this credit, that the same shall be duly honored on presentation at their counting house.*

A. B. & Co.

Please sign drafts as drawn under credit A. No. , dated New York, , and also send invoice, properly certified, and bills of lading by the vessel under cover to Messrs. A. B. & Co., New York.

The insurance will be effected at New York.

1288. Agreement Accompanying Foregoing Merchandise Letter of Credit.

To A. B. & Co., NEW YORK:

Having received the letter of credit, of which the annexed is a copy, for pounds sterling, in consideration whereof we do agree to provide at

your office in the city of New York, at least twenty days before the maturity in London of bills drawn under this credit, sufficient funds in cash or in bills on London, at not exceeding sixty days' sight, indorsed by us, and approved of by you, to meet the payment of the same with commission and stamps as stipulated at foot, and that all property which shall be purchased or shipped in compliance with the terms of this credit, the bills of lading therefor, the policies of insurance thereon, and the proceeds thereof, are hereby pledged and hypothecated as collateral security for the payment of the bills referred to, and for the payment of all sums that may be due, or may become due on this or any other indebtedness to you, and are and shall be held subject to your order on demand, with authority to take possession and dispose of the same at discretion for your security or reimbursement, and to charge all expenses, including commissions for sale and guarantee; and we further agree to give any additional security that may be demanded. Eventual interest to be charged at the published Bank of England rate, with a minimum of [five] per cent. per annum.

We further agree to provide insurance in A1 companies, covering all merchandise shipped under the annexed credit, loss, if any, payable direct to you, and certificate of such insurance to be placed in your hands.

This to continue in force and to be applicable to all transactions, notwithstanding any change in the individuals comprising the respective firms, parties to this contract, or in either of them, or in that of the user of this credit, whether such change shall arise from the accession of one or more new partners, or from the death or secession of any partner or partners.

You are authorized to cancel this letter of credit at any time to the extent it shall not have been acted upon when notice of revocation is received by the user.

G. H. & Co.

per cent. rate of commission, on drafts at sixty days' sight.

per cent. rate of commission, on drafts at three months' sight.

per cent. rate of commission, on drafts at four months' sight.

per cent. rate of commission, on drafts at six months' sight.

[To this add copy of letter of credit, Form No. 1287].

1289. Merchandise Letter of Credit; Another Form.

No. G

£

MESSRS. A. B. & Co., LONDON:

We hereby open a credit with you on account of Messrs. E. F. & Co., to be used by such parties as they may authorize, in drafts on you at months date, payable in London, to the extent of £ , say sterling, for value, in goods to be placed with you for shipment to , or in case the goods are to be sent from any port other than London, then the bills of lading to must be placed with you at the time of shipment, and in either case the bills of lading must be sent .

For your reimbursement you are required to draw, or to authorize us to draw, at months date on Messrs. , simultaneously with the transmission of the bills of lading, at the time of shipment, and to enable you to comply with this condition, it is distinctly understood, that prior to your parting with the bills of lading, you are to be advised of the value of the

goods and of the exact amount to be drawn against them, and further, that the drafts are to be drawn and dated at the time of shipment, and unless all these conditions be complied with, you will not consider yourselves bound to accept.*

The marine insurance to be effected . . .

This credit becomes void if not used on or before the . . .

This credit is subject to revocation by you to the extent it shall not have been acted upon when notice of revocation is received by the user.

Yours respectfully,

A. B. & Co.,
New York.

1290. Agreement Accompanying Above Form.

MESSRS. A. B. & Co.:

GENTLEMEN.—Having received from you the letter of credit of which the annexed is a copy, hereby agree to its terms, and in consideration thereof

bind to accept the drafts of Messrs. . . , or your own, on presentation, to give you satisfactory security for their payment, if required, and to pay them at maturity, either in cash, at the rate of exchange at which you may then be drawing, or in sterling bills, payable at not exceeding sixty days sight, in London, indorsed by . . . and approved by you, it being understood that you may reject any bills, however good, if you have at the time your limited amount running.

It is understood that all payments made to you in money or remittances made to . . . , in your bills shall be taken as a payment without recourse.

Their charge for commission to be . . . per cent. on such part of this credit as may be used, and they will furnish their account current semi-annually including that for forwarding charges, and draw or authorize you to draw on . . . for the balance thereof at sight.

Interest to be charged at the rate of [five] per cent. per annum, or at the current rate if it be above that.

And . . . hereby give you a specific claim and lien on all goods, and the proceeds thereof, for which . . . may come under any engagements in virtue of this credit, on all policies of insurance on such goods, and on all bills of lading for the same, with full power and authority to take possession and dispose of them at discretion, and to charge all expenses, including commissions for sale and guarantee.

And . . . further pledge to you said goods and the proceeds thereof as security for any other indebtedness of . . . to you.

This obligation is to continue in force, and to be applicable to all transactions, notwithstanding any change in the individuals composing the respective firms, parties to this contract, or either of them, or in that of the user of this credit, whether such change shall arise from the accession of one or more new partners, or from the death or secession of any partner or partners.

E. F. & Co.

[To this add copy of letter of credit, Form No. 1289].

1291. Open or Revolving Merchandise Letter of Credit.

[Add to Form 1287, or 1289, after *]: [200 days] after the date of the indorsement on this credit of each and every bill drawn thereunder, or sooner

if you shall be notified by us of the due payment of such bill or bills, the amount of said bill or bills shall again in all respects and subject to all like conditions be available for drafts; it being intended that this shall be an open or revolving credit, good for an amount not exceeding £ , outstanding and unsettled at any one time. Any bill or bills drawn hereunder shall be presumed to be paid 200 days after indorsement upon this credit of such bill or bills, unless in the meantime you shall be advised of nonpayment.

1292. Guaranty of Merchandise Letter of Credit, and Agreement.

In consideration of the foregoing agreement and credit, and of one dollar to me paid by A. B. & Co., of New York, the receipt whereof is hereby acknowledged, I do hereby guarantee said A. B. & Co., of New York, and A. B. & Co., of London, England, that the before-named E. F. & Co., will in all respects well and truly keep and perform each and every provision and condition of the foregoing agreement and credit on their part to be kept and performed, at the times and in the manner therein provided and set forth, and I also agree that said A. B. & Co., of New York, may, without in anywise affecting or annulling this guaranty, release the goods purchased under said credit upon trust receipts to be approved by them, or do any other act or thing necessary or customary in like transactions, or which in their discretion they may think proper, and without notice to me, it being intended that this guaranty shall cover every such transaction, and that it shall continue and not be in any way affected or annulled, except by written agreement signed by all parties hereto, until every liability of any kind under said credit, agreement, trust receipt, or otherwise shall be fully paid and discharged. I also hereby expressly waive and dispense with any demand upon the said E. F. & Co., or any notice of any non-performance on their part of any of the provisions or conditions, as aforesaid, holding myself liable to said A. B. & Co., of New York, and A. B. & Co., of London, under this guaranty and said agreement, credit, or otherwise, equally with the said E. F. & Co.

[If guarantor is a married woman, add as follows: And in consideration of the premises, I hereby charge my separate and individual estate of every kind and nature with and under this guaranty, and the payment of any sum or sums that may become due thereunder.] (Signed.) K. S.

Dated, New York, .

1293. Agreement on Purchase of Merchandise Under Order.

Having given to Messrs. Jones & Co., of Shanghai, an order for the purchase of tea, of which the annexed is a copy, to be forwarded by Smith & Co., for execution by Messrs. Jones & Co., who are hereby authorized to draw for our account against the cost, including charges, together with a commission of 3 per cent. for buyers' and bankers' commission, of such merchandise as may be purchased under said order, drafts on Messrs. Smith & Co., of London, England, for the amount of the invoice or invoices in pounds sterling, at four months' sight; we do hereby agree, without failure, and in any event, as hereinafter stated, to provide, at the office of Smith & Co., in the city of New York, at least twenty days before the maturity of each and every one of the said bills in London, sufficient funds in cash, or in bills of exchange on London, approved by Smith & Co., and indorsed by us, to meet the payment of the same; and that all property which shall be purchased under said order, the bills of lading thereof, the policies of insurance thereon and the proceeds

thereof, are hereby pledged to and hypothecated with Smith & Co., as collateral security for the payment of the bills referred to, and for the payment of all sums now due or that may become due to Smith & Co. on the annexed or any other order for teas given to Messrs. Jones & Co. through them, and are and shall be held subject to the order of Smith & Co., on demand, with authority and power to take possession and dispose of the same at discretion, as security for, or reimbursement of, any advances made for our account, and to charge all expenses, including commissions for sale and guaranty; and we further agree to give any additional security that may be demanded.

Eventual interest to be charged at the published Bank of England rate, with a minimum of [five] per cent. per annum.

We further agree to provide insurance in A1 companies, covering all merchandise shipped under the annexed order, loss, if any, payable direct to Smith & Co., and certificates of such insurance to be placed in their hands

And we further agree that no dispute which may arise in regard to the annexed or any other order, or any acts done thereunder, shall in anywise affect our liability to provide for the payment of the bills drawn thereunder as herein provided; and we hereby agree to make such provision for payment absolutely and notwithstanding any such dispute.

1294. Trust Receipt for Goods Purchased Under Letter of Credit.

NEW YORK,

Received from Messrs. A. B. & Co., of New York, as agents of A. B. & Co., London, the merchandise specified in the bill of lading, per _____, and in consideration thereof, we hereby agree to hold said goods, as security as herein-after stated, on storage, as the property of said A. B. & Co., agents, with liberty to sell the same for cash. In case of sale we further agree to hold the avails on like account, and hand them, as soon as received, to A. B. & Co., agents, as security for due provision for the acceptances of A. B. & Co., London, on our account, as noted at foot; and we further agree to hold said goods and the proceeds thereof for the payment of any other indebtedness of ours to A. B. & Co., London.

WE FURTHER AGREE to keep said property insured against fire, to its full value; the sum insured to be payable, in case of loss, to A. B. & Co., agents, with the understanding that they are not to be chargeable with the storage, premiums of insurance, or any other expenses incurred on said property; the intention being to protect and preserve unimpaired the title of A. B. & Co., agents, to said property.

WE FURTHER AGREE that no failure or omission upon our part to fully carry out any of the provisions of this or any similar receipt or agreement, or of the agreement under which A. B. & Co., London, authorized the letter of credit under which said goods were purchased, shall be deemed a waiver by A. B. & Co., London, nor by A. B. & Co., of New York, agents, of any of their rights or remedies under either of said papers, unless said waiver shall be in writing indorsed hereupon, and signed by said A. B. & Co. agents.

PROVIDED, HOWEVER, that nothing in this agreement contained shall in anywise affect, vary, or impair any of the provisions of the letter of credit under which said property was purchased, or of the provisions of the agreement under which said letter of credit was issued.

E. F. & Co.

1295. Agreement on Turning Over to Bankers, Goods Received Under Letter of Credit.

NEW YORK,

To MESSRS. A. B. & Co., NEW YORK:

We herewith hand you [*description of goods*]. In consideration of the issuing of the letter of credit hereinafter mentioned and of this agreement, we agree that you shall hold these goods as collateral security for the due performance of the provisions of the annexed agreement signed by us, and relating to letter of credit A, No. , for £ , dated , , in favor of , and for all other obligations under any other credit or credits issued by you, or which may be hereafter issued by you to us, and as collateral security for the payment of any other indebtedness of ours to you, and that for any and all sums that may be due, as aforesaid, you shall have a lien prior to all other claims or liens upon the said property and the proceeds thereof.

WE FURTHER AGREE to keep said property insured against fire to its full value, the sum insured to be payable, in case of loss, to A. B. & Co., with the understanding that they are not to be chargeable with the storage, premiums of insurance, or other expenses incurred on said property. The intention being to protect and preserve unimpaired the lien of A. B. & Co., on said property and the proceeds thereof.

WE FURTHER AGREE that said property shall be held by said A. B. & Co., subject to the provisions printed below, and which form a part of this agreement.

WE FURTHER AGREE that in case of the failure or omission on our part to fully carry out any of the provisions of this or any similar receipt or agreement, or of any of the letters of credit mentioned in this agreement, or of the several agreements under which any of said letters of credit were or may be issued, said A. B. & Co., may thereupon, or at any time thereafter, in their discretion, sell the property herein referred to at public or private sale without notice to us (if sold at public auction, they may become the purchasers) and receive its proceeds, which are to be applied in the first place to the payment in full of all charges on said property, and then of whatever sum or sums that may be due said A. B. & Co., as herein provided.

PROVIDED, HOWEVER, that nothing herein contained shall in anywise affect, vary, or impair any of the provisions of any of the letters of credit aforesaid, or of the several agreements under which any of said letters of credit were issued.

We hereby warrant that the full legal title to the above property or securities is in us, and that said title and said property or securities are free and clear from any banker's or other or prior lien, charge, grant, or incumbrance, legal or equitable, except warehouse charges.

E. F. & Co.

CONDITIONS REFERRED TO IN THE ABOVE INSTRUMENT.

1. A. B. & Co. shall not be liable for any loss or injury resulting from depreciation, or from any cause, other than the gross negligence of the said firm, which may happen to the property mentioned in the above instrument whilst in their custody.

2. Any failure or omission on our part to fully carry out any of the pro-

visions of this or any similar receipt or agreement, or of any letter of credit issued by A. B. & Co., or of any of the several agreements under which said A. B. & Co. have issued or may issue said letters of credit, shall not be deemed a waiver by A. B. & Co., agents, of any of their rights or remedies under this or either or any of said papers, unless said waiver shall be in writing endorsed hereupon, and signed by said A. B. & Co.

3. In case of any misrepresentation or concealment whatsoever, whether in regard to the ownership, character, value, or condition of the property or securities, or in any other respect, A. B. & Co. are entitled and are hereby authorized to sell the property or securities, upon five days' notice, to reimburse their advances, with interest, costs, commissions, and all other charges, and the party or parties signing the within agreement shall be held liable for any deficiency.

4. A. B. & Co. shall be at liberty, at any time hereafter, to take such action in regard to moving, storing, insuring, or in any way affecting the said property, as they, in their discretion, may think proper, and at the expense of the party or parties signing this agreement, and the said party or parties will sign or execute, upon demand, all papers requisite for the security of the said A. B. & Co., or to enable them to carry out the provisions of this contract.

1296. Agreement with Bank, Advancing on Goods.

NEW YORK, , .

§ .

Having delivered to the management, custody, and charge of A. B. & Co., the following described property, belonging to , viz: , and they having thereupon advanced to , upon the same, the sum of dollars, do, in consideration of said advance and the provisions of this contract, hereby agree with the said A. B. & Co. to refund said advance in lawful money of the United States, , and that for such advance, together with the commissions and charges hereinafter mentioned, as well as for all other sums whatsoever, due or owing, or to become due or owing, to the said A. B. & Co., from , the said A. B. & Co. shall have a lien, prior to all other claims, upon the said property, and the proceeds thereof; that the said property has been delivered to the said A. B. & Co., subject to the conditions hereto annexed, and which form a part of this agreement; and that the commissions of the said A. B. & Co., upon a sale thereof by them, shall be per cent. upon its gross proceeds, or the amount of the advance if greater than said proceeds. In case the amount of said advance shall not be paid to the said A. B. & Co. on the day of , the said A. B. & Co. may thereupon, or at any time thereafter in their discretion, sell the said property at public or private sale, and without notice to , and receive its proceeds, which are to be applied, in the first place, to the payment in full of the commissions, interest, and other charges on said property, and then of whatever of the said principal or other moneys that may be due from to the said A. B. & Co., as herein provided. But if no such sale shall be made by the said A. B. & Co., and the advance shall be refunded, and the property withdrawn from their custody, the compensation of the said A. B. & Co. for their management and charge of the said property, whilst in their custody, shall be per cent. upon the amount of such advance, over and above all charges for storage, interest, and all disbursements made

by the said A. B. & Co., on account of said property, which, in any event, are to be paid.

CONDITIONS ABOVE REFERRED TO.

1. A. B. & Co. shall not be liable for any loss or injury resulting from depreciation, or from any cause other than the gross negligence of the said firm, which may happen to the property mentioned in the foregoing instrument, whilst in their custody.

2. At, or any time after, the expiration of the period fixed for the payment of the advance, if it remain unpaid, the said A. B. & Co. may, in their discretion, sell the property at public or private sale, without notice to the owner (if sold at public auction, they may become the purchasers), and receive its proceeds, which are to be applied, in the first place, to the payment in full of the commissions, interest, and all other charges on said advance or property, and then to the payment of whatever of said advance and other moneys there may then be due to said A. B. & Co. Until such sale shall be made and proceeds collected, and the advance paid in full, interest on said advance, and charges, so far as the same has not been paid, and a *pro rata* commission shall be charged.

3. In case of a deficiency of such proceeds, it is to be made good by the party receiving the advance, upon demand, and immediately after such sale; and if there be a surplus, it is to be immediately accounted for and paid over to the party signing this contract or order, except as otherwise herein provided.

4. If at any time before the period fixed for the payment of the advance, or said sale, the market value of the property should be so reduced as not to afford to the said A. B. & Co., at the time being, a margin of security for the payment of their advance of at least _____, then additional property or security to make up such margin shall, within two days after its being required, be deposited with them. And if default be made in that respect, the amount of such advance may immediately thereupon, at their option, and without further notice, become due and collectible, as if the period limited for its payment had expired, and they may immediately proceed as provided in the second article.

5. In case of any fraud, misrepresentation, or concealment whatsoever, whether in regard to the ownership, character, value, or condition of the property or securities, or in any other respect, or in case of failure to perform any of the conditions of this agreement, A. B. & Co. are entitled, and are hereby authorized to sell the property or securities immediately and without notice, to reimburse their advances with interest, costs, commissions, and all other charges, and the party or parties signing the within agreement will be held liable for any deficiency.

6. A. B. & Co. shall be at liberty, at any time hereafter, to take such action in regard to moving, storing, insuring, or in any way affecting the said property as they, in their discretion, may think proper, and at the expense of the party or parties signing this agreement; and the said party or parties will sign or execute, upon demand, all papers requisite for the security of the said A. B. & Co., or to enable them to carry out the provisions of this contract.

CHAPTER XXXIX.

LICENSES.

A LICENSE is an authority or permission to do some act affecting one's property, without granting any interest or right in the property. It is distinguished from a power, which involves to some extent the idea of the relation of principal and agent; and from a grant, which transfers some interest in the property. A license, relating even to real property, may be given by parol; but if it is desired to give any interest in the property, or any permanent right, the appropriate instrument is a deed.

A license is revocable at the will of him who grants it; and though it is a justification for acts done meanwhile, yet when revoked, the protection which it gave ceases. It is only where a license is annexed as an incident to a valid grant, that it is deemed irrevocable. Hence, if a mere temporary permission is sought, such as to go upon the land and cut wood, an oral license will suffice to protect from a charge of trespass; but if any continuous right is desired, a grant should be made.

See chapters on DEEDS; MARRIAGE, ETC.; PATENTS.

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1297. License to Erect Telephone Poles.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, of the city of _____, in the state of _____, in consideration of the sum and amount herein agreed to be paid by the _____ Telephone Company, a corporation duly organized and existing under the laws of the state of _____, do hereby grant unto said company, its successors and assigns, the right, privilege, and authority to construct, operate, and perpetually maintain its lines of telephone and telegraph, including the necessary poles, wires, and fixtures, over, across, and upon the following described real estate, now owned by me, in the county of _____, and state of _____, to wit: _____ and also hereby grant unto said company, its successors and assigns, the right, privilege, and authority to cut down or trim any trees along the said lines necessary to keep the wires clear, at least eighteen inches; also to set the necessary guy and brace poles, and to attach to trees along said line all necessary guy wires, and to that end the said The _____ Telephone Company is hereby fully authorized and empowered to enter upon the above-described premises for the purpose of constructing and maintaining its said telephone and telegraph lines thereon and over the same, as above provided.

In consideration of said grant, The _____ Telephone Company hereby covenants and agrees to and with the above-named _____, to pay him in full satisfaction and payment therefor the sum of _____ per pole, for each and every pole of said line so located upon the above-described premises and real estate. Said payment to be due and payable as soon as the number of poles to be thus placed upon said property is ascertained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, A. D. _____.

[Witnesses.]

[Signature and seal.]

Correct:

Approved:

Superintendent Construction.

General Superintendent.

RECEIPT.

§

Received of The Telephone Company, the sum of dollars, in full payment and satisfaction of the amount agreed to be paid by the terms of the within agreement.

Dated at , this day of , .

CHAPTER XL.

MARRIAGE AND MARRIAGE SETTLEMENTS.

Marriage, in the eye of the common law, is simply a civil contract, differing from other contracts only in this, that it cannot be rescinded at the will of the parties. Formal solemnization by a clergyman or magistrate is not essential. An agreement by the parties, made in words relating to the present (as distinguished from a contract to marry in the future) has been declared by high authority to constitute a valid and complete marriage without either consummation or official solemnization.

In some of the states, however, the statutes require notice of intended marriage to be given, and licenses to be taken out; the details of the regulations adopted in this regard varying much in different states.

By the common law, infants may marry—in the case of males, at the age of fourteen, and females at twelve—and the consent of parents is not necessary to the validity of the marriage.

This rule is modified in New York. The legal age of consent being for both parties, eighteen years. Domestic Relations Law, § 7, Birdseye, C. & G. Consolidated Laws of New York, p. 1021.

Solemnization.—This subject is regulated in New York state by the Domestic Relations Law, §§ 10-18 and 25; Birdseye, C. & G. Consolidated Laws, pp. 1024-1031, and 1034.

The marriage must be solemnized by either:

1. A clergyman or minister of any religion, or by the leader, or either of the two assistant leaders of the society for ethical culture in the city of New York.

2. A mayor, recorder, alderman, city magistrate, police justice or police magistrate of a city, but in cities containing more than 100,000 and less than 1,000,000 inhabitants, by the mayor, or police justice, and no other officer of such city, except as provided in subdivisions 1 and 3; or

3. A justice or judge of a court of record or of a municipal court, or a justice of the peace, except justices of the peace in cities containing more than 100,000 and less than 1,000,000 inhabitants; or

4. A written contract of marriage signed by both parties and at least two witnesses who shall subscribe the same, stating the place of residence of each of the parties and witnesses and the date and place of marriage and acknowledgment of a conveyance of real estate to entitle the same to be recorded, provided however that all such contracts of marriage must in order to be valid be acknowledged before a judge of a court of record. Such contract shall be recorded within six months after its execution in the office of the clerk of the county in which the marriage was solemnized. The word "clergyman" when used in the following sections of this article, includes each person referred to in the first subdivision of this section. The word "magistrate" when so used, includes any person referred to in the second or third subdivision. Domestic Relations Law, § 11, p. 1026.

No particular form or ceremony is required when the marriage is solemnized by a clergyman or magistrate, but the parties must solemnly declare in

the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony. The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted. *Ibid.*, § 12, p. 1027.

It shall be necessary for all persons intending to be married to obtain a marriage license from the town or city clerk of the town or city in which the woman to be married resides and to deliver said license to the clergyman or magistrate who is to officiate before the marriage can be performed. If the woman or both parties to be married are non-residents of the state such license shall be obtained from the clerk of the town or city in which the marriage is to be performed. *Ibid.*, § 13, p. 1027.

The town or city clerk of each and every town or city in this state is hereby empowered to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony, authorizing the marriage of such parties, which license shall be substantially in the following form:

1298. Marriage License.

STATE OF NEW YORK,
County of _____,
City or town of _____.

Know all men by this certificate that any person authorized by law to perform marriage ceremonies within the state of New York to whom this may come, he, not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between _____ of _____ in the county of _____ and state of New York and _____ of _____ in the county of _____ and state of New York and to certify the same to be said parties or either of them under his hand and seal in his ministerial or official capacity and thereupon he is required to return his certificate in the form hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said town or city at _____ this _____ day of _____, 19 ____ . [SEAL.]

The form of the certificate annexed to said license and therein referred to shall be as follows:

I, _____ a _____ residing at _____ in the county of _____ and state of New York do hereby certify that I did on this _____ day of _____ in the year A. D., 19 _____, solemnize the rites of matrimony between _____ of _____ in the county of _____ and state of New York and _____ of _____ in the county of _____ and state of New York in the presence of _____ and _____ as witness and the license therefor is hereto annexed.

WITNESS my hand at _____ in the county of _____ this _____ day of _____, A. D., 19 _____.

In the presence of

[Signatures.]

The license issued and the certificate duly signed by the person who shall have solemnized the marriage therein authorized shall be returned by him to the office of the town or city clerk who issued the same on or before the tenth day of the month next succeeding the date of the solemnizing of the marriage therein authorized and any person or persons who shall wilfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars for each and every offense. *Ibid.*, § 14, p. 1027.

It shall be the duty of the town or city clerk when an application for a marriage license is made to him to require each of the contracting parties to sign and verify a statement or affidavit before such clerk or one of his deputies, containing the following information. From the groom: Full name of husband, color, place of residence, age, occupation, place of birth, name of father, country of birth, maiden name of mother, county of birth; number of marriage. From the bride: Full name of bride, place of residence, color, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. The said clerk shall also embody in the statement, if either or both of the applicants have been previously married, a statement as to whether the former husband or husbands or the former wife or wives of the respective applicants are living or dead and as to whether either or both of said applicants are divorced persons, if so when and where the divorce or divorces were granted and shall also embody therein a statement that no legal impediment exists as to the right of each of the applicants to enter into the marriage state. The town or city clerk is hereby given full power and authority to administer oaths and may require the applicants to produce witnesses to identify them or either of them and may also examine under oath or otherwise other witnesses as to any material inquiry pertaining to the issuing of the license. If it appears from the affidavits and statements so taken, that the persons for whose marriage the license in question is demanded are legally competent to marry the said clerk shall issue such license, except in the following cases. If it shall appear upon an application of the applicants as provided in this section that the man is under twenty-one years of age or that the woman is under the age of eighteen years, then the town or city clerk before he shall issue a license shall require the written consent to the marriage from both parents of the minor or minors or such as shall then be living, or if the parents of both are dead then the written consent of the guardian or guardians of such minor or minors. If there is no parent or guardian of the minor or minors living to their knowledge then the town or city clerk shall require the written consent to the marriage of the person under whose care or government the minor or minors may be before a license shall be issued. The parents, guardians or other persons whose consents it shall be necessary to obtain before the license shall issue, shall personally appear before the town or city clerk and execute the same if they are residents of the state of New York and physically able so to do. If they are nonresidents of the state the required consents may be executed and duly acknowledged without the state but the consent with a certificate attached showing the authority of the officer to take acknowledgments must be duly filed with the town or city clerk before a license shall issue. Before issuing any license herein provided for, the town or city clerk shall be entitled to a fee of one dollar which sum shall be paid by the applicants before or at the time the license is issued; and all such fees so received by the clerks of cities shall be paid monthly to the treasurer of the city wherein such license is issued. Any town or city clerk who shall issue a license to marry any persons one or both of whom shall not be at the time of the marriage under such license legally competent to marry without first requiring the parties to such marriage to make such affidavits and statements or who shall not require the procuring of the consents provided for by this act, which shall show that the parties authorized by said license to be married are legally competent to marry shall be guilty of a mis-

demeanor and on conviction thereof shall be fined in the sum of one hundred dollars for each and every offense. *Ibid.*, § 15, p. 1029.

Any person who shall in any affidavit or statement required or provided for in this act wilfully and falsely swear in regard to any material fact as to the competency of any person for whose marriage the license in question or concerning the procuring or issuing of which such affidavit or statement may be made shall be deemed guilty of perjury and on conviction thereof shall be punished as provided by the statutes of this state. *Ibid.*, § 16, p. 1030.

If any clergyman or other person authorized by the laws of this state to perform marriage ceremonies shall solemnize or presume to solemnize any marriage between any parties without a license being presented to him or them as herein provided or with knowledge that either party is legally incompetent to contract matrimony as is provided for in this article shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding one year. *Ibid.*, § 17, p. 1030.

Any such clergyman or officer as aforesaid to whom any such license duly issued may come and not having personal knowledge of the incompetency of either party therein named to contract matrimony, may lawfully solemnize matrimony between them. *Ibid.*, § 18, p. 1030.

Each town and city clerk hereby empowered to issue marriage licenses shall keep a book in which he shall record and index all affidavits, statements, consents and licenses together with the certificate attached showing the performance of the marriage ceremony which book shall be kept and preserved as a part of the public records of his office. On or before the fifteenth day of each month the said town and city clerk shall file in the office of the county clerk of the county in which said town or city is situated the original of each affidavit, statement, consent, license and certificate, which have been filed with or made before him during the preceding month. He shall not be required to file any of said documents until the license is returned with the certificate showing that the marriage to which they refer has been actually performed. *Ibid.*, § 19, p. 1031.

The county clerk of each county shall record and index in a book kept in his office for that purpose each statement, affidavit, consent and license together with the certificate thereto attached showing the performance of the marriage ceremony filed in his office. During the first twenty days of the month of January, April, July and October of each year the county clerk shall transmit to the state department of health at Albany, New York, a copy of all affidavits, statements, consents and licenses with certificates attached filed in his office during the three months preceding the date of said report, also copies of all contracts of marriage made and recorded in his office during said period entered into in accordance with subdivision four of section eleven of this chapter, which said record shall be kept on file and properly indexed by the state department of health. The services rendered by the county clerk in carrying out the provisions of this act shall be a county charge except in counties where the county clerk is a salaried officer in which case they shall be a part of the duties of his office. *Ibid.*, § 20, p. 1030.

Blank forms for marriage licenses and certificates and also the proper books for registration ruled for the items contained in said forms and also blank statements and affidavits and such other blanks as shall be necessary to comply with the provisions of this article shall be prepared by the state board of health and shall be furnished by said department at the expense of the state to the county clerks of the various counties of the state in the quantities needed from time to time, and the county clerk of each county shall distribute them to town and city clerks in their respective county in such quantities as their necessities shall require. The expense of distributing the same to said town and city clerks is hereby made a county charge. *Ibid.*, § 21, p. 1032.

Copies of the records of marriages including the license and certificate of marriage and all other records pertaining thereto duly certified by the clerk

of the county where the same are recorded under his official seal shall be evidence in all courts. *Ibid.*, § 23, p. 1032.

The provisions of this article pertaining to the granting of the licenses before a marriage can be lawfully celebrated apply to all persons who assume the marriage relation in accordance with subdivision four of section eleven of this chapter. Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age nor to render void any marriage between minors or with a minor under the legal age of consent where the consent of parent or guardian has been given and such marriage shall be for such cause voidable only as to minors or a minor upon complaint of such minors or minor or of the parent or guardian thereof. *Ibid.*, § 25, p. 1034. As to contracts between husband and wife, and articles of separation, see the chapter on HUSBAND AND WIFE.

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1299. Short Form of Solemnization of Marriage before Magistrate.

[*The magistrate may direct the parties to join the right hands, and will then say:*] "By this act you do take each other for husband and wife, and solemnly promise and engage, in the presence of this witness [*or, these witnesses*], to love, honor, comfort, and cherish each other, as such, so long as you both shall live:

"THEREFORE, in accordance with the laws of the state of _____, I do hereby pronounce you husband and wife."

1300. Marriage Certificate.

STATE OF _____, }
 County of _____, } ss.

THIS CERTIFIES, that on the _____ day of _____, _____, before me came A. B., of the city of _____, and the state of _____, and C. D., of the city of _____, and state of _____, to me known to be the persons herein described [*or, C. D., to me known, and A. B., proven to me by the oath of Y. Z.*], and were by me lawfully united in marriage according to the laws of the state of _____, in the presence of the witnesses below named.

AND I FURTHER CERTIFY, that I ascertained previous to the solemnization of the said marriage, that the said A. B. and C. D. were of sufficient age to contract the same, and that after due inquiry by me made, there appeared no lawful impediment to such marriage.

[*Date.*]

[*Signature and title of officer.*]

[*Signatures of witnesses.*]

NOW, THEREFORE, in consideration of the said intended marriage, and of the sum of one dollar to the said party of the second part, by the said party of the third part paid, the receipt whereof is hereby confessed and acknowledged, the said party of the second part hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said party of the third part, his successors and assigns, all that [*here describe the property*]:

TO HAVE AND TO HOLD the said tenements and hereditaments, with their appurtenances, unto the said party of the third part, his successors and assigns, to such uses and purposes as are hereinafter mentioned — to wit: For the use and benefit of the said party of the second part, until her said intended marriage shall take place, and from and after the solemnization thereof, then upon trust from time to time to apply to the use of the said party of the second part, all the interest, dividends, and annual produce thereof, during the joint lives of the said parties of the first and second parts, to her own proper use and benefit, and upon her own proper receipt for the same, notwithstanding her coverture, to the intent that the same may not be at the disposal or under the control of the said party of the first part, or in any manner subject to his debts and engagements; and from and immediately after the decease of the said party of the first part, in case the said party of the second part shall survive him, then upon trust for the use and benefit of the said party of the second part, her executors, administrators, and assigns; and upon trust in such case to grant and convey the trust estate, and every part thereof, to the said party of the second part absolutely, or to grant and convey the same to such person or persons as she, by any writing to be by her duly executed, may limit, direct, and appoint. But in case the said party of the first part shall survive the said party of the second part, then upon trust from and immediately after her decease, to apply to the use of the said party of the first part, all the interest, dividends, and annual produce thereof, from time to time, during his natural life, to and for his own use and benefit; and on the decease of the said party of the first part, to pay and divide the capital or principal of the said trust fund, and to grant and convey all her real estate to and among the lawful children of the said party of the second part, and their issue, in such proportions, shares, manner, and form as she, by any writing, under her hand subscribed in the presence of two or more witnesses, shall direct and appoint; and for want of such appointment, to and among the said children of the said party of the second part, and the lawful issue of such of them as may be deceased, according to the rules of descent and of distribution in cases of intestacy. But if there be no issue of the said party of the second part then surviving, then, upon trust, to pay and dispose of the said capital or principal, and grant and convey the said real estate according to the direction and appointment of the said party of the second part, and for want of such appointment, to and among her then surviving nephews and nieces, children to her sisters, and the lawful issue of such of them as may be deceased, according to the like rule of descent and distribution.

[*Power to sell and re-invest, if added, may be as follows:*] And the said party of the second part doth hereby grant and agree that the said party of the third part, upon the written request of her, the said party of the

second part, may grant and convey the whole or any designated portion of the said estate upon such terms as she shall direct, and receive the consideration money therefor, and invest the same for the like uses and purposes hereinbefore declared, with respect to the original trust.

IN WITNESS WHEREOF, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.
[Signature and seals.]

in the presence of
[Signature of witness.]

1303. Contract of Marriage.

THIS contract of marriage, made and entered into this day of , in the year one thousand nine hundred and , between , whose residence is at in the county of and state of , and , whose residence is at in the county of and state of .

WITNESSETH that, on this day of A. D., 19 , the parties aforesaid, at in the county of and state of New York, do hereby solemnize their marriage and enter into a contract of marriage each with the other, and solemnly agree to live together henceforward as husband and wife.

IN WITNESS WHEREOF, we, the aforesaid parties hereto, have severally signed and acknowledged these presents the day and year first hereinbefore written. Signed and delivered in the presence

of us, as witnesses:

.....
residing at .
.....
residing at .

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this day of 19 , before me personally appeared the above-named A. B., the husband, and C. D., the wife, and E. F. and G. H., the witnesses, to me personally known and known to me, to be the persons described in and who executed the foregoing instrument, the said A. B. and C. D. as husband and wife, and the said C. D. and E. F. as witnesses, and severally acknowledged that they executed the same as such husband and wife, and as witnesses, respectively, for the uses and purposes therein mentioned.

[Signature of judge (of court of record).]
[Official title.]

CHAPTER XLI.

MORTGAGES.

A mortgage is the conveyance of an estate by way of pledge for the security of debt, and to become void on payment of it. According to the old view, the legal ownership was vested in the creditor; but in equity, and the courts of law adopt the same rule now, the mortgagor remains the actual owner, until he is debarred by his own default or by judicial decree.

In this chapter, mortgages of real property only are treated; those relating to personal property, being subject to somewhat different rules, are treated under CHATEL MORTGAGES.

The usual form of a mortgage is a deed, with terms purporting to convey the land absolutely, followed by other terms expressing that it is to be void if the grantor pays a certain sum. This condition is called the defeasance.

A power of sale, in case of default, is usually inserted, which enables the mortgagee to enforce payment. The manner of foreclosure of the mortgage may be either by an action, or by advertisement according to the statute, as is stated in the chapter of FORECLOSURE.

A mortgage may be made either with or without a personal promise to pay the debt. If no such promise is expressed, the mortgage does not render the mortgagor liable for the sum secured, but only gives a lien on the property. It is usual not only to insert a covenant in the mortgage to pay the debt, but to give a bond or note for it, and to recite the fact in the mortgage, and state that the mortgage is given as collateral to the personal security.

A mortgage may be made to secure a contingent liability or future advances; but in such case it ought to be so expressed.

A mortgage on which the principal or interest is payable in installments may contain a provision that in case of any default the mortgagee may elect to require payment of the whole interest and principal at once. This provision is usually termed the interest clause.

Where a considerable part of the value of the mortgaged premises consists in buildings, it is usual to provide that the mortgagor shall keep them insured in a specified sum and assign the policy to the mortgagee. This is called the insurance clause.

It is not necessary for the wife of a mortgagor to join in executing the mortgage, if it be given at the same time that the property is conveyed to him, and for the purpose of securing purchase money. In these cases it is usual to state the fact in the mortgage, by a clause inserted at the end of the description of the premises.

Mortgages by peculiar parties, corporations, executors, etc., should be modified slightly, according to the forms given for deeds by such parties.

Mortgages should be acknowledged or proved as deeds are, for the forms of which see the chapter on ACKNOWLEDGMENT AND PROOF OF DEEDS. They are to be recorded like deeds. For the provisions in this regard, see chapter on DEEDS.

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I. GENERAL FORMS.

1304. Short Form.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of dollars, grants, bargains, sells, and confirms unto the said party of the second part, and to his heirs and assigns, all [*here insert description; see Forms 828-847*]; together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.* THIS CONVEYANCE is intended as a mortgage, to secure the payment of the sum of dollars, in [*here state terms of agreement, as in Forms 407-412*], according to the condition of a certain bond, dated this day, and executed by the said party of the first part to the party of the second part; and these presents shall be void is such payment be made. But in case default shall be made in the payment of the

principal or interest, as above provided, then the party of the second part, his executors, administrators, and assigns, are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns.

IN WITNESS WHEREOF, the said party [*or, parties*] of the first part has [*or, have*] hereunto set his hand and seal [*or, their hands and seals*], the day and year first above written. [*Signature and seal.*]

Signed, sealed, and delivered in the presence of

[*Signature of witness.*]

1305. Another Form; To Secure Note.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that I, A. B., of _____, for the consideration of _____ dollars, received to my full satisfaction, of Y. Z., do give, grant, bargain, sell, and confirm unto the said Y. Z. [*here insert description of premises*]:

TO HAVE AND TO HOLD the above-granted and bargained premises, with the appurtenances thereof, unto the said grantee, his heirs and assigns forever; to his and their proper use and behoof.

AND ALSO, I, the said grantor, do, for myself, my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that at and until the enscaling of these presents, I am well seized of the premises as a good indefeasible estate in fee simple; and have good right to bargain and sell the same in manner and form as above written; and that the same are free from all incumbrances whatsoever.

AND FURTHERMORE, I, the said grantor, do, by these presents, bind myself and my heirs forever, to warrant and defend the above-granted and bargained premises to him, the said grantee, and his heirs and assigns, against all claims and demands whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this _____ day of _____, A. D. _____.

THE CONDITION of this deed is such, that WHEREAS the said grantor is justly indebted to the said grantee in the sum of _____ dollars, as evidenced by his promissory note for said sum, of even date herewith, payable to the said grantee or order _____ after date, with interest:

NOW, THEREFORE, if said note shall be well and truly paid, according to its tenor, then this deed shall be void; otherwise, to remain in full force and effect. [*Signature and seal.*]

Signed, sealed, and delivered in presence of

[*Signatures of witnesses.*]

1306. Mortgage with Interest and Insurance Clauses.

THIS INDENTURE, made the _____ day of _____, in the year one thousand nine hundred and _____, between A. B., of the city, county, and state of _____, and C. B., his wife, parties of the first part, and Y. Z., of the same place, party of the second part:

WHEREAS, the said A. B. is justly indebted to the said party of the sec-

ond part, in the sum of dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of dollars, lawful money, as aforesaid, conditioned for the payment of the said first-mentioned sum of dollars, lawful money, as aforesaid, to the said party of the second part, his executors, administrators, or assigns, on the day of , which will be in the year one thousand nine hundred and , and interest thereon to be computed from the date thereof, at and after the rate of per cent. per annum and to be paid semi-annually — to wit: on the day of and on the day of in each and every year, until the whole of the said principal sum be paid; and it is thereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of days, then, and from thenceforth — that is to say, after the lapse of the said days — the aforesaid principal sum of dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in any wise notwithstanding, as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

NOW, THIS INDENTURE WITNESSETH: That the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description*]:

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

TO HAVE AND TO HOLD the above-granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever;

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said A. B., for himself, his heirs,

executors, and administrators, does covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money and interest, as mentioned above and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said parties of the first part, their heirs, executors, administrators, or assigns, therein, at public auction, according to the act in such case made and provided; and as the attorney of the said parties of the first part, for that purpose by these presents duly authorized, constituted, and appointed to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there shall be) unto the said A. B., party of the first part, his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or either of them.

And it is expressly agreed by and between the parties to these presents* that the said parties of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in at least the sum of dollars [or, in an amount] and by insurers approved by the said party of the second part, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with interest at the rate of per cent. per annum.

IN WITNESS [etc., as in Form 1304].

1307. Same with Further Assurance and Receiver Clauses

[As in preceding form to *, and from thence as follows:] that , the part of the first part, will execute any further necessary assurance of the title to said premises and will forever warrant said title.

And it is hereby further covenanted and agreed that the said part of the second part, legal representatives or assigns, shall be at liberty, immediately after any default in any of the conditions of said bond or mortgage, upon a complaint filed, or any other proper legal proceedings commenced for the foreclosure of this mortgage, to apply for, and shall be entitled as a matter of right, and without regard to the value of the premises above described, or the solvency or insolvency of the part of the first part, or of any owner of said premises, and without notice to the part of the first part, heirs or assigns, to the appointment by any competent court or tribunal of a

receiver of the rents, issues, and profits of said premises, with the power to lease said premises for a term to be approved of by the court, with power to pay taxes, assessments, and water rents, which are or may become liens on said premises, and keep the same insured, and with power to take proceedings to dispossess tenants, and make all necessary repairs, and with such other powers as may be deemed necessary, who, after deducting all charges and expenses attending the execution of the said trust as receiver, shall apply the residue of the said rents and profits to the payment and satisfaction of this mortgage, and the bond accompanying the same, or to any deficiency which may arise after applying the proceeds of the sale of said premises to the amount due, including interest, and costs and expenses of the foreclosure sale.

1308. Same, with Interest, Tax, Assessment, Insurance, and Receiver Clauses.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between , of , of the first part, and of , of the second part;

WHEREAS, the said justly indebted to the said part of the second part, in the sum of , lawful money of the United States, secured to be paid by certain bond or obligation bearing even date with these presents, in the penal sum of , lawful money, as aforesaid, conditioned for the payment of the said first mentioned sum of .

AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax or assessment be hereafter imposed upon the premises hereinafter described and become due or payable, and should the said interest remain unpaid and in arrear for the space of days, or such tax or assessment remain unpaid and in arrear for , then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said part of the second part, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

NOW, THIS INDENTURE WITNESSETH: That the said part of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to in hand paid by the said part of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm unto the said part of the second part, and to and assigns forever, all [*here insert description*]:

TOGETHER WITH all and singular the tenements, bereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion

and reversions, remainder and remainders, rents, issues, and profits thereof: And also, all the estate, right, title, interest, ; property, possession, claim, and demand whatsoever, as well at law as in equity, of the said part of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To HAVE AND TO HOLD the above-granted, bargained, and described premises, with the appurtenances, unto the said part of the second part, heirs and assigns, to their own proper use, benefit, and behoof forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said part of the first part, heirs, executors, or administrators, shall well and truly pay unto the said part of the second part, executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said , heirs, executors and administrators, do covenant and agree to pay unto the said part of the second part, executors, administrators, or assigns, the said sum of money and interest, as mentioned above, and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, or of the taxes or assessments on the premises hereby granted, that then and from thenceforth it shall be lawful for the said part of the second part, executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said part of the first part, heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided: And as the attorney of the said part of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there shall be) unto the said of the first part, heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said part of the first part, heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or either of them.

And the said do further covenant, grant, promise, and agree, that , the said part of the first part, shall and will make, execute, acknowledge, and deliver in due form of law all such further or other deeds or assurances as may at any time hereafter be advised, devised or required, for the more fully and effectually conveying the premises above described and hereby granted, or intended so to be, unto the said part of the second part, executors, administrators, or assigns, for the purposes aforesaid, and unto all and every person or persons, corporation or corporations, deriv-

ing any estate, right, title, or interest therein, under this indenture or the power of sale herein contained, and the above-granted premises against the said part of the first part, and all persons claiming through them, will warrant and defend.

AND IT IS EXPRESSLY AGREED, by and between the parties to these presents, that the said part of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurers, and in an amount approved by the said part of the second part, and assign the policy and certificates thereof to the said part of the second part; and in default thereof, it shall be lawful for the said part of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with interest at the rate of per cent. per annum.

And it is further expressly covenanted and agreed by and between the parties hereto, that if default shall be made in the payment of the principal sum mentioned in the condition of said bond, or of any part thereof, or of the interest which shall accrue thereon, or of any part thereof, or of any tax or assessment, or of any part thereof, or of the interest thereon, or of any part thereof, at the respective times therein specified for the payment thereof, the said part of the second part, legal representatives or assigns, shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and receive the rents, issues, and profits thereof, and apply the same, after payment of all necessary charges and expenses, on account of this mortgage and of the bond accompanying the same.

And the said part of the second part, legal representatives or assigns, shall be at liberty immediately after any such default, upon a complaint filed, or any other proper legal proceedings commenced for the foreclosure of this mortgage, to apply for, and shall be entitled as a matter of right, and without regard to the value of the premises above described, or the solvency or insolvency of the part of the first part, or of any owner of said premises, and on ten days' notice to the part of the first part, heirs or assigns, to the appointment by any competent court or tribunal of a receiver of the rents, issues, and profits of said premises, with the power to lease the said premises for a term to be approved of by the court, with power to pay taxes, assessments, and water rents, which are or may become liens on said premises, and keep the same insured, and with power to take proceedings to dispossess tenants, and make all necessary repairs, and with such other powers as may be deemed necessary, who, after deducting all charges and expenses attending the execution of the said trust as receiver, shall apply the residue of the said rents and profits to the payment and satisfaction of this mortgage, and the bond accompanying the same, or to any deficiency which may arise after applying the proceeds of the sale of said premises to the amount due, including interest and costs, and expenses of the foreclosure sale.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

Sealed and delivered in the presence of

1309. Mortgage on Lease.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between A. B., of , in the county of , and state of , merchant, of the first part, and Y. Z., of , in the said county, farmer, of the second part:

WHEREAS, M. N., of , did, by a certain indenture of lease, bearing date the day of , in the year one thousand nine hundred and , demise, lease, and to farm let unto the said A. B., and to his executors, administrators, and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances:

TO HAVE AND TO HOLD the same unto the said A. B., and to his executors, administrators, and assigns, for and during and until the full end and term of years, from the day of , and fully to be complete and ended, yielding and paying therefor unto the said M. N., and to his heirs, executors, administrators, or assigns [*or, if the lessor be a corporation, say, to its successors or assigns*], the yearly rent or sum of dollars [*here set forth the terms of the lease, or, better, refer to the instrument upon record*]; and,

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation bearing even date with these presents, in the penal sum of dollars, lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of dollars, as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear:

NOW, THIS INDENTURE WITNESSETH: That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also, for and in consideration of the sum of one dollar, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, all [*here insert description of premises as in lease*]. TOGETHER WITH all and singular the edifices, buildings, rights, members, privileges, and appurtenances thereunto belonging or in anywise appertaining. And also, all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said demised premises, and every part and parcel thereof, with the appurtenances. And also, the said indenture of lease, and every clause, article, and condition therein expressed and contained:

TO HAVE AND TO HOLD the said indenture of lease, and other hereby granted premises, unto the said party of the second part, his executors, administrators, and assigns, to his and their only proper use, benefit, and behoof, for and during all the rest, residue, and remainder of the said term of years yet to come and unexpired; subject, nevertheless, to the rents, covenants, conditions, and provisions in the said indenture of lease mentioned. PROVIDED ALWAYS, and these presents are upon this express condition, that if the

said party of the first part shall well and truly pay unto the said party of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then and from thenceforth these presents and the estate hereby granted shall cease, determine, and be utterly null and void, anything hereinbefore contained to the contrary in anywise notwithstanding. And the said party of the first part does hereby covenant, grant, promise, and agree to and with the said party of the second part, that he shall well and truly pay unto the said party of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And that the said premises hereby conveyed now are free and clear of all incumbrances whatsoever, and that he has good right and lawful authority to convey the same in manner and form hereby conveyed. And if default shall be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said party of the second part, and his assigns, to sell, transfer, and set over all the rest, residue, and remainder of the said term of years then yet to come, and all other the right, title, and interest of the said party of the first part, of, in, and to the same, at public auction, according to the act in such case made and provided. And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make, seal, execute, and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer, or other conveyance in the law, for the same premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase money (if any there shall be), unto the said party of the first part, or his assigns; which sale, so to be made, shall be a perpetual bar, both in law and equity, against the said party of the first part, and against all persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them.

IN WITNESS [etc., as in Form 1304].

1310. Mortgage on Premises in Building Lease to Secure the Repayment of Sums Advanced and to be Advanced to the Lessee, to Enable Him to Complete Houses.

THIS INDENTURE, made the day of , between A. B., of, etc., of the one part, and Y. Z., of , of the other part [*recite building lease to A. B.*]; and,

WHEREAS, pursuant to the covenant for this purpose contained in the said recited indenture of lease, the said A. B. hath already laid out and expended the sum of dollars in erecting buildings on the said piece or parcel of ground in the said indenture comprised; and,

WHEREAS, the said A. B. having occasion for the sum of dollars, for the purpose of enabling him to complete the erections and buildings intended to be erected on the said piece or parcel of ground, pursuant to the aforesaid

covenant as aforesaid, hath applied to and requested the said Y. Z. to lend him the same, which he, the said Y. Z., hath agreed to do in two separate sums — that is to say, the sum of dollars immediately upon the execution of these presents, and the sum of dollars, being the remainder of the said sum of dollars, when and so soon as all the erections and buildings already built, and to be erected and built, pursuant to the aforesaid covenant of the said A. B., as aforesaid, shall have been covered in, on having the said several sums of dollars and dollars, with interest thereon respectively, secured in manner hereinafter expressed:

Now, THIS INDENTURE WITNESSETH: That in pursuance of the said agreement, and in consideration of the sum of dollars, to the said A. B. paid by the said Y. Z., on or immediately before the execution of these presents, and in consideration of the covenant hereinafter contained on the part of the said Y. Z., to advance the further sum of dollars to the said A. B., on all the said erections and buildings being covered in as aforesaid, he, the said A. B., doth hereby assign unto the said Y. Z., his executors, administrators, and assigns, all and singular the piece or parcel of ground, hereditaments, and premises comprised in and demised by the said recited indenture of lease, and also all erections and buildings which have been erected and are now standing on the said premises [and all the estate, etc.]:

To HAVE AND TO HOLD the said hereditaments and premises hereby assigned, or expressed so to be, unto the said Y. Z., his executors, administrators, and assigns, for all the residue now unexpired of the said term of years, created by the said recited indenture of lease, subject, nevertheless, to the proviso for redemption hereinafter contained. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said A. B., his heirs, executors, administrators, or assigns, shall, on the day of , , pay to the said Y. Z., his executors, administrators, or assigns, the sum of dollars, with interest for the same, after the rate of dollars per cent. per annum, computed from the date of these presents, and shall also pay to the said Y. Z., his executors, administrators, or assigns, such further sum as shall be hereafter advanced by the said Y. Z., his executors, administrators, or assigns, pursuant to the covenant of the said Y. Z., in that behalf hereinafter contained, unto or on account of the said A. B., together with interest for the same, after the rate of dollars per cent. per annum, to commence and be computed from the time of advancing the same, at the expiration of six calendar months next after such sum as aforesaid shall be advanced, then and in such case the said Y. Z., his executors, administrators, or assigns, shall, upon the request and at the cost of the said A. B., his executors, administrators, or assigns, re-assign the said hereditaments and premises hereby assigned, or expressed so to be, unto the said A. B., his executors, administrators, and assigns, or as he or they shall direct. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said Y. Z., his executors, administrators, and assigns, that the said A. B., his heirs, executors, administrators, or assigns, shall and will, on the said day of , A. D. , pay unto the said Y. Z., his executors, administrators, or assigns, the said sum of dollars, with interest for the same, computed from the date of these presents, after the rate of dollars per cent. per annum; and if the said sum of dollars shall not be paid on the said day of , , then said A. B. shall and will pay to said Y. Z., his executors, administrators, or assigns, interest on the said principal sum.

or on so much thereof as shall for the time being remain unpaid, after the rate aforesaid, by equal half-yearly payments, on the day of , and the day of , in every year, until the whole of the said principal sum shall be paid, and also shall and will pay unto the said Y. Z., his executors, administrators, or assigns, such sum as shall be hereafter advanced by the said Y. Z., his executors, administrators, or assigns, unto or on account of the said A. B., together with interest for the same, after the rate of dollars per cent. per annum, to commence and be computed from the time of advancing the same, at the expiration of six calendar months next after such sum as aforesaid shall be advanced, and if the last-mentioned sum shall not be paid at the expiration of the said six calendar months, then shall and will pay to the said Y. Z., his executors, administrators, or assigns, interest for the same, or so much thereof as shall for the time being remain unpaid, after the rate aforesaid, by half-yearly payments, on the same days as are hereinafter appointed for payment of the interest on the said principal sum of dollars [*may insert absolute covenants for title by A. B., as in chapter on COVENANTS; and a covenant by A. B., for payment of the rents, and for the observance of the covenants in the lease*]. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said Y. Z., his executors, administrators, and assigns, that he, the said A. B., shall and will, before the day of , fully and completely finish the erections and buildings hereby assigned or expressed so to be, and all other the erections and buildings which are to be erected and built on the said piece of ground, pursuant to the covenant for this purpose entered into by the said A. B., by the said recited indenture of lease as therein mentioned; and that, in case default in this respect shall be made by the said A. B., then it shall be lawful for the said Y. Z., his executors, administrators, or assigns, to enter upon and into the said premises hereby assigned, and to complete the said erections and buildings, and any other erections and buildings which ought to be built on the said piece or parcel of ground, pursuant to the aforesaid covenant, in such manner as he or they may think proper; and in that case the said A. B., his executors, administrators, or assigns, shall or will, on demand, pay unto the said Y. Z., his executors, administrators, or assigns, all sums of money which he or they shall expend thereon, with interest thereon after the rate aforesaid, from the time or respective times of paying or advancing or expending the same, and that the said premises hereby assigned, or expressed so to be, shall then stand charged with, and not be redeemed or redeemable until full payment shall be made, as well of the moneys which shall be so expended as aforesaid, together with interest thereon as aforesaid, as also of the several other moneys hereby secured. And the said Y. Z. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors, administrators, and assigns, that he, the said Y. Z., when and so soon as all the erections and buildings already erected and to be erected, pursuant to the covenant for that purpose contained in the said recited indenture of lease shall be covered in, and in case, up to that time, all and singular the covenants hereinbefore contained on the part of the said A. B. shall have been duly kept and performed, shall and will lend and advance the said A. B., his executors, administrators, and assigns, the further sum of dollars, at interest after the rate aforesaid, on the security of these presents.

IN WITNESS [*etc., as in Form 1304*].

1311. Mortgage for Purchase Money.

[*Insert in either of the forms, after the description of the premises:*] being the same premises conveyed to the said A. B., by the said Y. Z. and wife, by deed bearing even date with these presents, which are given to secure the payment of [part of] the purchase money of the said premises.

1312. Mortgage to Secure Indorser.

[*As in Form 1304 to the *, continuing thus:*]

WHEREAS, the said party of the second part, at the request, and for the benefit of the said party of the first part, has, on the day of the date of these presents, indorsed a certain _____, made by the said party of the first part, for the sum of _____ dollars, bearing date _____, and payable _____ days after _____, to the order of _____, at _____:

Now, THEREFORE, this conveyance is intended to secure the party of the second part for all principal and interest money, costs, charges, and expenses which he may be compelled to pay, in consequence of the failure of the said party of the first part to pay and take up the said _____ at maturity; and if the amount of the said _____, principal and interest, shall be paid by the party of the first part at maturity, then these presents shall become void, and the estate hereby granted shall cease and utterly determine; but if default shall be made by the said party of the first part in the payment of the said sum of money, or the interest, or of any part thereof, at the time hereinbefore specified, and the same be paid by or collected of the party of the second part, the said party of the first part hereby authorizes and empowers the party of the second part, his heirs, executors, administrators, and assigns, to sell the said premises hereby granted, at public auction, and convey the same to the purchaser in fee simple, agreeably to the act in such case made and provided; and out of the money arising from such sale, to retain such sum or sums of money as may have been paid by or collected of the said party of the second part, as above mentioned, together with all costs and charges, and pay the overplus (if any) to the said party of the first part, his heirs, executors, administrators, or assigns.

IN WITNESS [*etc., as in Form 1304*].

1313. Mortgage to Secure Unliquidated Amount.

[*Insert:*] TO HAVE AND TO HOLD the above-described premises, with the appurtenances, to the said party of the second part, his heirs and assigns forever; provided always, and these presents are upon the express condition that if the said [debtor], his heirs, executors, or administrators, shall well and truly pay, and save harmless and indemnify the said W. X. and Y. Z., and each of them, of and from all liabilities which they or either of them may have at any time contracted to or for said [debtor], either as surety, indorser, guarantor, or otherwise, whether now due or yet to grow due, and shall save harmless the said W. X. and Y. Z., and each of them, of and from all damages, costs, and charges on account of the same, according to the conditions of a certain bond or writing obligatory, bearing even date herewith, executed by the said [debtor] to the said parties of the second part, then these presents shall cease and become of no effect; but in case default shall be made in the payment of all or any part of the said liabilities as the same shall become due, at the time or times limited for the payment thereof, then in such case it shall be lawful, etc.

1314. Mortgage of Land in Exercise of a General Power of Appointment.

THIS INDENTURE, made, etc., between A. B., of _____, of the first part, and Y. Z., of _____, of the second part [*recite conveyance to mortgagor, to such uses as he might by deed appoint, and, subject thereto, to uses in strict settlement, and an agreement for loan*]: Now, THIS INDENTURE WITNESSETH: That in consideration [*etc., reciting the receipt, etc.*], he, the said A. B., in exercise and in execution of the power for this purpose given or limited to him by the said recited indenture as aforesaid, and of all other powers (if any), enabling him in this behalf, doth hereby appoint that all [*here insert description*], shall go, remain, and be to the use of the said Y. Z., his heirs and assigns, subject to the proviso hereinafter contained. [*Continuing as in other cases.*]

1315. Agreement Giving Priority to a Mortgage About to be Executed Over One Previously Executed.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, A. G., of _____, and E. G., his wife, did, on the _____ day of _____, execute and deliver to Y. Z., a mortgage upon a certain farm of land, of which D. G., died seized and possessed, situate in the town of _____, in the county of _____, and state of _____, conditioned for and to secure the payment of the sum of _____ dollars, which said mortgage was recorded in the county clerk's office of _____ county, on the _____ day of _____, in book of Mortgages No. _____, at page _____; and,

WHEREAS, the said A. G. and his wife, for the purpose, among other things, of paying or securing certain debts owned by D. G., at the time of his death, have agreed to execute and deliver a mortgage upon said premises to F. V., of, etc., conditioned for the payment of the sum of _____ dollars, to be a first mortgage upon said premises:

Now, THEREFORE, the said Y. Z., of _____, in consideration of the premises, and of the sum of one dollar to him in hand paid by said A. G., the receipt whereof is hereby acknowledged, and of other good and valuable and sufficient considerations and causes moving thereto, hath bargained consented, promised, and agreed, and doth hereby bargain, consent, promise, and agree, to and with the said A. G., his heirs and assigns, that the mortgage upon said premises thus to be executed by said A. G. and wife to the said F. V., for the amount and interest above mentioned, shall at all times be a prior mortgage and a prior lien upon said premises to the said mortgage of Y. Z., first above mentioned.

And the said Y. Z., of _____, in consideration as aforesaid, and for the purposes aforesaid, hath granted, released, quitclaimed, and set over, and by these presents doth grant, release, quitclaim, and set over to the said A. G., and to his heirs and assigns, all and every part of the premises described in said mortgage, with the hereditaments and appurtenances thereunto belonging, and all the right, title, and interest of the said Y. Z., of _____, in or to the same, to the intent that all of the said land and premises may be discharged from his said mortgage, solely and only so far as may be necessary to secure to said mortgage so to be executed and delivered as aforesaid, priority thereto, as above mentioned, holding and reserving his said mortgage unsatisfied and in full force and effect as a second and subsequent mortgage and lien on said premises after the mortgage to be executed

thereon to F. V., as herein above mentioned, in all respects the same as if these presents had not been executed.

IN WITNESS WHEREOF, the said Y. Z., hath subscribed his name and affixed his seal this day of , in the year .

Y. Z. [SEAL.]

1316. An Agreement Between Mortgagee and Mortgagor for Mortgagor to Grant Building and Other Leases.

AGREEMENT, etc., between A. B. of the one part and C. D. of the other part.

WHEREAS, by indenture of mortgage bearing date the day of , and made or expressed to be made between the said C. D. of the one part and the said A. B. of the other part, all and singular his the said C. D.'s messuages, etc., situate , were granted, bargained, sold, released, and assured unto and to the use of the said A. B., his heirs and assigns, by way of mortgage for securing the payment of the sum of dollars advanced and lent by the said A. B. to the said C. D., with interest for the same as in the said indenture of mortgage is mentioned; and,

WHEREAS, several parts of the said premises are capable of great improvement by being let on building or repairing leases, and it may be expedient to let other parts thereof:

NOW THESE PRESENTS WITNESS, and the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree to and with the said C. D., his heirs and assigns, that if at any time whilst the principal sum of dollars, or any part thereof, shall remain due and owing upon the said recited securities before the said A. B., his executors, administrators, or assigns, shall have filed a bill to foreclose the equity of redemption of the said mortgage and premises, the said C. D. shall be desirous of granting any such leases, then it shall and may be lawful to and for him, the said C. D., by indenture or indentures under his hand and seal, to demise, lease, and grant, all or any part or parts of the said hereditaments and premises, comprised in the said hereinbefore in part recited indenture of mortgage, unto any person or persons who shall be willing to build upon or to improve the same on building or repairing leases for any term or number of years not exceeding ninety-nine years; and also to demise, lease and grant all or any part of the said lands, hereditaments, and premises, as have usually been letten at rent or rents unto any person or persons who shall be willing to take the same for any term or number of years not exceeding (twenty-one) years, so as the respective lease or leases be made to take effect in possession and not in reversion, or by way of future interest, and so as such respective grants or leases for (ninety-nine) years be made in order for the premises to be built upon or improved. And, also, that in all and every the said leases there be reserved and made payable, half-yearly or oftener during the continuance of the said term thereby to be granted, the best and most approved yearly rent and rents that can be had or reasonably gotten for the same without taking any sum or sums of money or other things by way of fine, income, or foregift, and so as the several lessees in the said several building or repairing leases do enter into proper and usual covenants to build and keep in repair the messuages, erections, and buildings agreed to be erected and built upon the ground thereby to be leased respectively, with covenants in all the leases that the

tenants and lessees do leave and surrender the premises at the end of the term or terms in such leases respectively to be granted, and so as in every of the said leases there be contained conditions of re-entry, etc., and that he, the said A. B., his heirs, executors, administrators, and assigns, shall and will, from time to time, upon the reasonable request, and at the costs and charges of the said C. D., his heirs and assigns, allow, ratify, and confirm all and every the lease and leases to be granted in conformity to the restrictions hereinafter mentioned.

PROVIDED, such confirmation does not prejudice his right to enter into and recover and hold the possession of the said mortgaged premises by virtue of the said recited mortgage deeds, subject only to such leases as have been granted by the said C. D., agreeable to the true intent and meaning of these presents.

A. B. [SEAL.]

IN WITNESS, ETC.

C. D. [SEAL.]

1317. Stipulation in a Mortgage Given to Secure the Payment to Trustees of Outstanding Securities Held by Various Creditors, That It Shall Be Deemed Purely Collateral, and Shall Not Affect the Liability of Sureties.

[Insert:] AND WHEREAS some of the parties to the notes, bills, acceptances or other securities which the lenders of the said several sums of money hold for the payment thereof, and which parties are liable to the said lenders therein, may, for anything that is known to the said parties of the second part, or to the lenders of the said money, stand in the relation of sureties to the said the parties of the first part; and,

WHEREAS, it is not the intention of the said parties to these presents that the said lenders shall, by the operation of these presents, or of the said bonds, relinquish any security which they now hold for the payment of the said money or any part thereof. It is, therefore, expressly stipulated and agreed that these presents, and the said bonds hereinbefore mentioned and referred to, shall be, and shall be regarded, in all courts and places as collateral to the said notes, bills, acceptances, and other securities; and that none of the said notes, bills, acceptances, or securities shall be deemed to be merged or extinguished by the execution of these presents, or of the said bonds, but the same are to remain in full force and effect; and also in case any of the parties liable, or who may become liable, upon the said notes, bills, acceptances, or other securities, shall pay the same or any part thereof before the money hereby secured shall become due and payable according to the periods of payment hereinbefore prescribed, and shall, by such payment, or in any other-wise, become entitled to prosecute the said the company, or any other party or parties, upon the said notes, bills, acceptances, or for such money paid or otherwise; the said parties so paying, and who shall become entitled to prosecute as aforesaid, shall, notwithstanding the credit or time of payment hereinbefore and in the said bond mentioned, be entitled immediately to maintain any suits or actions at law or in equity, in the same manner and to the same extent in every respect as though these presents and the said bonds had not been executed, or had been made payable immediately, and shall likewise be entitled to the same benefit of subrogation which they would be entitled to if the said time of credit had not been given, and for

that purpose, in all suits and proceedings to be had or taken by any such party, in his own name or otherwise, the said moneys hereby secured shall be deemed to be, and shall be due and payable immediately, so far only as may be necessary to secure to the said parties who are sureties all rights and advantages incident to their relation as such sureties, anything herein contained to the contrary notwithstanding.

1318. Stipulation as to Paying Off in Advance.

[Insert both in the mortgage and the bond, after the clause fixing the time of payment, such a clause as the following:] with the privilege to the parties of the first part, their executors, administrators, or assigns, at any time before said day of , , to pay off said mortgage in whole, or in sums of or more dollars at a time, on giving notice, in writing, to the party of the second part, his executors, administrators, or assigns, of intention so to do.

1319. Corporate Mortgage or Deed of Trust.

NOTE.—The following (No. 1319) is a short form of a trust mortgage sufficient for ordinary corporate purposes.

The succeeding form (No. 1320) is intended to be a full and complete railroad mortgage, with all the clauses and provisions that are likely to be necessary in any ordinary railroad mortgage.

Forms Nos. 1321–1325 are the forms respectively proper for a second mortgage, an income mortgage, a consolidated mortgage, an equipment mortgage, and a debenture mortgage. In case any of these latter features are combined with the ordinary corporate trust mortgage, the requisite provisions should be inserted from forms Nos. 1321–1325. For forms of temporary bonds see Nos. 1326–1328.

THIS INDENTURE, made and entered into this 1st day of April, A. D. , by and between the Building Company, a corporation duly created, organized, and existing under and by virtue of the laws of the state of , and hereinafter called the building company, party of the first part, and the Trust Company, a corporation duly created, organized, and existing under and by virtue of the laws of said state of , as trustee, and hereinafter called the trustee, party of the second part:

WHEREAS, the building company is a corporation, as aforesaid, duly created, organized, and existing under and by virtue of the laws of the state of , and more particularly formed and existing under title , chapter , of the General Statutes of , and possessing power and authority under its charter among other things to buy, own, improve, mortgage, and sell lands, tenements, and hereditaments, and real, mixed, and personal estate and property, and to do and perform any and all lawful business and undertakings that may be necessary, essential, and expedient to the proper and efficient carrying on and success of the several kinds of business by it assumed under its articles of incorporation, dated the day of , ; and,

WHEREAS, under and in pursuance of the authority in it vested under the laws aforesaid, the building company has acquired title to and is now the owner of lots six (6) and seven (7), in block sixty-four (64), of the city of proper, and has, for the more perfect carrying on of the business for which it was incorporated, built and erected on the property aforesaid a fire-proof, granite, and sandstone, twelve-story and basement office building, which is of the value of one million five hundred thousand dollars (\$1,500,000); and,

WHEREAS, the building company has full authority and power under the laws of the state of _____ to borrow money as aforesaid, and has also authority to issue its corporate bonds, and secure the same by mortgage or deed of trust upon any and all of the property, real or personal, of said building company, now owned, or which may hereafter be owned or acquired by it; and,

WHEREAS, at a meeting of the board of directors¹ of the building company, duly held pursuant to law and to notice on the _____ day of _____, A. D. _____, the following preamble and resolutions were unanimously adopted, viz.:

WHEREAS, in the opinion of this board it is expedient and for the best interests of this company to release a part of the capital of the company invested in lots six (6) and seven (7), in block sixty-four (64), of the city of _____ proper, and the fire-proof, granite, and sandstone, twelve-story and basement office building, thereon erected, and fund the same at a low rate of interest, and for the purpose aforesaid to make, issue, and dispose of the first mortgage bonds of this company to the amount of six hundred thousand dollars (\$600,000), to be secured upon the said lots six (6) and seven (7), in block sixty-four (64), of the city of _____ proper, and said fire-proof, granite, and sandstone, twelve-story and basement office building, and the other property, real, personal, or mixed, now in or upon, or hereafter to be purchased by this company in connection therewith; now, therefore, be it

Resolved, That this company make, negotiate, and issue its twenty year first mortgage gold bonds for the aggregate sum of six hundred thousand dollars (\$600,000), which bonds shall be of the denomination of four hundred dollars (\$400) or one thousand (1,000) Dutch guilders each, and which shall be numbered consecutively from one (1) to fifteen hundred (1,500), both inclusive, and shall be substantially in the following form, viz.:

UNITED STATES OF AMERICA.²

No. _____

STATE OF _____

\$400.

f. 1,000.

FIRST MORTGAGE GOLD BOND OF THE _____ BUILDING COMPANY.

Total issue, \$600,000.

The _____ Building Company, a corporation existing under the laws of the state of _____, for value received hereby acknowledges itself indebted to the _____ Trust Company of the city of _____, state of _____, as trustee, or bearer, or if this bond is registered, then to the registered owner hereof, as hereinafter provided, in the principal sum of four hundred dollars (\$400), United States gold coin, and promises to pay the said sum, together with exchange on New York, or the equivalent thereof in Dutch money at the rate of two and one-half guilders (f. 2.50) to the dollar, to the said trust company, or bearer, or registered owner of this bond, on the 1st day of April, A. D. 19 _____, in gold coin of the United States of America of the present standard of weight and fineness, at the office of the agents of the said Building Company in the city of Amsterdam, Holland; and also, until the repayment of the principal of said bond, to pay, in like gold coin at the same

¹ In most cases, the action of the stockholders approving the issuing of the mortgage is also required by law. For the proper recitals in such case, see Form 1321, and those succeeding it.

² In this mortgage and the bonds thereunder, provision is made for the payment of the bonds abroad in foreign money. For the best form of corporation bond, see Form 1087.

place and at the same rate of exchange in Dutch money aforesaid, interest on said principal sum on the first days of April and October in each year, at the rate of four and one-half per centum per annum on the presentation and surrender of the annexed coupons, and as they severally become due, and without deduction from either principal or interest for any United States or state or other tax whatsoever, which the Building Company is or may be required by law to retain therefrom, and which it hereby agrees to pay.

This bond is one of a series of fifteen hundred (1,500) bonds of like tenor, date and amount, numbered consecutively from one (1) to fifteen hundred (1,500), both inclusive, and amounting in the aggregate to six hundred thousand dollars (\$600,000) or one million five hundred thousand Dutch guilders (f. 1,500,000), secured by a first mortgage or deed of trust bearing even date herewith, made, executed, and delivered by the Building Company to the

Trust Company, as trustee, upon the freehold estate, lots six (6) and seven (7) of block sixty-four (64) of the city of proper, and the twelve-story and basement, fire-proof, granite and sandstone, office building situated thereon, together with the fixtures and appurtenances now or hereafter to be connected therewith, in the county of and state of , as more particularly described in said mortgage or deed of trust, to which reference is hereby made for the provisions thereof. And this bond is moreover secured by a sinking fund of forty thousand dollars (\$40,000) per annum, payable to the said trustee on the 1st day of April, A. D. , and annually thereafter, as provided in said deed of trust or mortgage, and is liable to be redeemed at par, and ten per cent. premium, and accrued interest, at any time before the maturity hereof, and on and after the 1st day of April, 19 , on its being called for the purpose of redemption, and notice given for ninety (90) days, as is in the said deed of trust or mortgage more fully provided. This bond shall pass by delivery, except that, after the registration of ownership certified thereon by the transfer agent of the company, no transfer shall be valid except upon the books of the transfer agency, unless the last transfer be to bearer, which shall restore transferability by delivery, but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of each holder. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery merely, but the coupons may be surrendered and the interest made payable only to the registered owner of the bond. This bond shall not be valid until the certificate indorsed thereon shall have been duly executed by the said trustee.

IN WITNESS WHEREOF, the said building company has caused these presents to be executed by affixing hereunto its corporate seal, attested by its secretary, and has caused this bond to be signed in its name by its president, and the annexed interest coupons to be executed with the engraved signature of its treasurer, this 1st day of April, A. D. .

The Building Company.
By

[SEAL.]

ATTEST:

President.

Secretary.

And that each of said bonds shall have annexed thereto the proper coupons or interest warrants for the semi-annual interest to become due on such bond, in general form and substance as follows, except as to the date of payment:

COUPON.

§9. f. 22.50.
 On the day of , the Building Company promises to pay to the bearer at the office of the agents of said company in the city of Amsterdam, Holland, the sum of nine dollars (§9) in gold coin, or the equivalent in Dutch money, at the rate of two and one-half Dutch guilders (f. 2.50) to the dollar, with exchange on New York, being six (6) months' interest on its first mortgage four and one-half (4½) per cent. gold bond number .
Treasurer.

And that the following form of certificate be placed upon each and all of the said bonds issued under the security of the said deed of trust or mortgage:

TRUSTEE'S CERTIFICATE.

The Trust Company hereby certifies that this bond is one of the series of bonds mentioned in the deed of trust or mortgage therein referred to.
Trust Company,

By
President.

Be it further *Resolved*, That for the purpose of securing the payment of said bonds and interest which shall accrue thereon, this company make, execute and deliver to the Trust Company of , , as trustee, a deed of trust or mortgage upon the freehold estate, lots six (6) and seven (7) of block sixty-four (64) of the city of proper, and the twelve-story and basement, fire-proof, granite and sandstone office building situated thereon, in the county of , and state of , together with the equipments, fixtures, and appurtenances thereunto belonging, or which shall hereafter be acquired and used by this company in connection therewith, such deed of trust or mortgage to be in trust for the benefit and security of the holders of such bonds to the extent aforesaid, without preference, priority, or distinction as to lien or otherwise.

Resolved, That until the said fifteen hundred (1,500) bonds or obligations of the company for four hundred dollars (\$400) or one thousand (1,000) Dutch guilders each, intended to be secured by the said deed of trust or mortgage, shall be engraved, executed, and delivered, the said bonds or obligations of the company, or any of them, may be represented by one or more written or printed obligations of this company of the same aggregate amount, in such form, and bearing such dates as the president of this company shall determine at the time of the execution and delivery thereof, and as shall be approved by the trustee; and such written or printed obligation or obligations so issued shall have the same rights, remedies, lien, and security that appertain to the said fifteen hundred (1,500) bonds for four hundred dollars (\$400), or one thousand Dutch guilders (f. 1,000) each, when issued under the provisions of the said deed of trust or mortgage, and shall, until surrendered in exchange for a like amount of engraved bonds, represent the same indebtedness.*

Resolved, That this company reserve the right to redeem and cancel on the 1st day of April, A. D. 19 , and on the 1st day of April in each year thereafter during the currency of said bonds, the whole, or any part of said bonds, by paying for the bonds so redeemed the principal thereof and ten per cent. premium and all accrued interest thereon, this company to give, not less than

* For this form, see Nos. 1326, 1327.

ninety (90) days before the 1st day of April in each of such years, written notice to the trustee of the number of bonds which it so desires to redeem and pay, and the said trustee upon receiving such notice to ascertain and determine by lot the serial numbers of the bonds so as to be redeemed and paid;

PROVIDED, that this company shall make remittances to meet such principal and interest so to be paid, so that such remittances shall reach the office of its agents at Amsterdam, Holland, at least five (5) days, or their correspondents in New York city at least twelve (12) days before the date of such payment, or the maturity of such bonds.

Resolved, That the president of this company be and he hereby is authorized for and on behalf of this company and as its act and deed to affix its corporate seal to the said mortgage or deed of trust, and said bonds and obligations, and to sign the same in the name of this company as such president, and to cause the same to be duly attested by the secretary, and when so executed in due form of law to deliver and record the said deed of trust or mortgage.

And the draft or form of the said deed of trust or mortgage having been now submitted to and read and examined by the board of directors at this present meeting and having been found satisfactory; it was further unanimously

Resolved, That the deed of trust or mortgage so to be executed, delivered, and recorded, by the president and secretary of this company in its behalf and as its act and deed, as above authorized and directed, shall be in the form now submitted, which form is hereby adopted, ratified, and approved.

NOW THIS INDENTURE WITNESSETH: That the Building company, party of the first part, under the authority and power aforesaid, and in consideration of the premises, and of the mutual covenants herein contained, and of the sum of one dollar to it in hand paid by the Trust Company, party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby confessed and acknowledged, and in order to secure the payment of the principal and interest of the bonds herein mentioned, has granted, bargained, sold, assigned, set over, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, assign, set over, alien, enfeoff, release, convey, and confirm, unto the Trust Company of , party of the second part, and to its successor or successors in the trusts hereby created, and their heirs, executors, administrators, and assigns, forever, in trust, and for the uses and trusts hereby created, all the following described lands, property, premises, and estate, situate, lying, and being in the county of , state of , and more particularly described as follows, to wit: Lots six (6) and seven (7) of block sixty-four (64) in the city of proper, as the same shall appear from the recorded plat thereof on file and of record in the office of the register of deeds, in and for the county and state aforesaid, and the twelve-story with basement, granite and sandstone, fire-proof office building, thereon situated, and all the elevators, shafting, engines, boilers, and other fixtures now attached or hereafter to be attached to or connected with the said realty, and which for the purposes of this agreement are intended and agreed to be a part of the real property conveyed hereunder, and any and all other personal or other property, now or hereafter used or to be used in connection with said real estate, and belonging to said building company, whether attached

to said realty, or disconnected therefrom, or partly attached and partly disconnected, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well at law as in equity, and every part and parcel thereof, with the appurtenances;

TO HAVE AND TO HOLD all and singular the above-mentioned and described premises, property, rights, estates, and appurtenances, herein described and conveyed, transferred, or assigned, or intended to be hereby conveyed, transferred, and assigned, and the reversions, remainders, incomes, revenues, rents, issues, and profits thereof, unto and to the use of the said Trust Company, as trustee, and its successors in said trust, and their heirs and assigns forever, according to the nature, tenor, and quality thereof respectively.

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit, security, and protection of the persons and corporations, firms and partnerships who shall hold the bonds and interest coupons aforesaid, or any or either of them, and for enforcing the payment thereof when payable, in accordance with the true intent and meaning of this deed, and of said bonds and of said coupons, and without preference to any of the said bonds over any of the others, by reason of the priority in the time of issue or negotiation thereof or otherwise howsoever, and upon and for the trusts, intents, and purposes, and upon the covenants and agreements hereinafter expressed, that is to say:

ARTICLE 1. The building company shall forthwith make, execute, and deliver to the trustee bonds of the building company intended to be secured hereby, to an amount not exceeding in the aggregate six hundred thousand dollars (\$600,000) or one million five hundred thousand Dutch guilders (f. 1,500,000), which bonds for the amount aforesaid shall be countersigned, and certified and delivered by the trustee, and until the said bonds shall be engraved the building company may execute and issue written or printed temporary bonds or obligations in such form or forms, and in such amounts as may be approved and countersigned or certified by the trustee, and which shall be entitled to all the security hereunder, and be exchangeable for or convertible into the bonds to be issued hereunder, and which shall be by the trustee canceled upon such exchange or conversion being effected, and when such bonds or obligations are countersigned or certified by the trustee to the effect that they are issued under and secured by this deed of trust or mortgage, such certificate shall be conclusive evidence that such bonds or obligations have been issued in accordance with, and are entitled to the security of this deed of trust or mortgage, whatever the form of such bonds or obligations may be.

ARTICLE 2. Until the building company, or its successors or assigns, shall make default in the payment of the bonds secured hereby, or any of them, or of any of the annual sinking fund payments, or interest thereon, or other payments provided for herein, and on the days and times and in the manner provided in said bonds or herein respectively, without further delay, and without reduction from either principal or interest for any tax or taxes which the building company may be required to pay or retain therefrom by any present or future laws of the United States, or of the state of or otherwise, the said building company having agreed and hereby agreeing to pay

the same, or until proceedings of any kind shall be commenced against the said building company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage, on the property hereby conveyed, or any part of it, or until the institution of any proceedings, either at law or in equity, whereby the control or ownership of the property hereby conveyed, or any part thereof, may be affected or disturbed, or until the building company shall do, or permit to be done, anything that may in anywise tend to diminish the value of the premises and property hereby conveyed, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or until the building company shall make default or breach in the performance or observance of any other condition, obligation, or requirement in the said bonds or herein imposed upon the building company, or its successors, in reference to the said bonds, or in the due performance and observance of any covenants or agreements hereof to be performed and observed by said building company, the said trustee shall permit and suffer the building company, and its successors and assigns, to possess, manage, operate, and enjoy all the lands, tenements, and hereditaments, property, rights and privileges, hereinbefore described as conveyed and assigned, and intended to be conveyed and assigned hereby, and to receive, take, and use the income, revenues, rents, issues, and profits thereof in the same manner and with the same effect as if this deed had not been made.

ARTICLE 3. If the said building company, its successors or assigns shall at any time hereafter make default, or refuse, neglect, or omit for [six months] to pay the semi-annual interest on the bonds intended to be secured hereby, or any of them, or shall fail to pay the annual sinking fund payments, or any of them, or to make any other payment of the principal of said bonds or otherwise, as provided herein, or shall suffer or allow any taxes, assessments, or charges to be or become in arrears, whereby the security of this mortgage may be impaired, or shall fail to pay and discharge any lien upon said premises for labor, or material, or otherwise, which the protection of the lien of this mortgage shall require to be paid, or shall fail to keep said premises insured with the provision that the loss thereunder shall be paid to the trustee herein as its interest may appear (as hereinafter more particularly specified and set forth); or if proceedings of any kind shall be commenced against the building company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage on the property hereby conveyed, or any part of it, or in case of the institution of any proceedings, either at law or in equity, whereby the control or ownership of the property, or any part thereof herein mentioned, may be affected or disturbed, or in case the building company shall do or permit to be done anything that may in anywise tend to diminish the value of the premises or property hereby conveyed, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this agreement, or in case the building company shall make default or breach in the performance or observance of any other condition, obligation, or requirement in the said bonds or herein imposed upon the building company, or its successors or assigns, in reference to the said bonds, or the due performance of any covenants or agreements hereof, then and in either of such events the holders of [one-third] in amount of the said bonds secured hereby and then outstanding, in respect to which such default shall have occurred, may by an instrument in writing by them

signed, and addressed and delivered to said trustee, notify said trustee of such default, and declare the principal of all said bonds due and payable, and in said instrument may also request the said trustee to proceed hereunder for the collection of the principal and interest of all the bonds then outstanding within a reasonable time after the receipt of such notice; and thereupon and upon the giving of said notice, the entire principal of all the then outstanding bonds shall become immediately due and payable, anything in said bonds or herein contained to the contrary notwithstanding; and thereupon the trustee shall and will, upon receiving adequate security and indemnity against all costs, expenses, and liabilities to be by the said trustee incurred, or without such request or security or indemnity, it shall be lawful for the trustee in its own discretion forthwith to demand, and with or without process of law, and with such force as may be necessary, to enter upon, take, and maintain immediate and exclusive possession of all and singular the lands, tenements, and hereditaments, premises, rights, privileges, and other property hereby conveyed and assigned, or intended to be conveyed and assigned, and as the attorney in fact or agent of the building company, or in its own name as trustee, by itself or by its agents and substitutes duly constituted and appointed, or by its managers, superintendents, receivers, or servants, to have, hold, use, manage, operate, lease, and enjoy the same, and each and every part thereof, to as full an extent as the building company might lawfully do, making from time to time all needed and proper repairs, alterations, and additions, and paying insurance, taxes, assessments, liens, and other necessary expenses connected therewith, and receiving all the revenues, rents, issues, incomes, and profits thereof, and after deducting the expenses of such use, operation, repairs, alterations, and additions, and the costs and charges of such taking possession, and proper compensation for such taking possession and management while in possession, and such sum or sums as may be sufficient to indemnify such trustee against any liability, loss, or damage for or on account of any matter or thing done in good faith in pursuance of the duty of said trustee, it shall apply the remaining net income and revenue therefrom without preference, priority, or distinction of one bond over another, ratably and equally to the payment of accrued and accruing interest due on the said bonds then outstanding and intended to be hereby secured; and the trustee shall, as soon as practicable after such entering on and taking possession as aforesaid, or without such entering upon or taking possession, but upon like declaration and request in writing, and with security and indemnity, or without such security and indemnity, in the discretion of the said trustee, and with or without the order or decree of any court of equity or other competent court having jurisdiction in the premises, and as by the trustee may be determined, or by said court may be ordered and decreed, sell and dispose of to the highest and best bidder or bidders at public auction, and on such notice and at such times and places as the trustee or court may authorize, but upon a notice of the time and place of such sale by advertisement, published not less than once in each week for not less than sixty (60) days in one or more daily newspapers of general circulation published in each of the cities of _____ and Amsterdam, Holland, and adjourn said sale or sales from time to time in its discretion, and if adjourning to make such sale or sales at the times and places to which the same may be so adjourned, all singular the lands, tenements, heredita-

ments, and appurtenances, and the estate and property, real, personal, and mixed, and all elevators, machinery, tools, engines, implements, equipments, fuel, supplies, and materials, rights, and privileges herein described, conveyed, transferred, and assigned, or intended to be hereby conveyed, transferred, and assigned; and thereupon to convey, transfer, assign, and deliver the same to the purchaser or purchasers thereof by good and sufficient deed or deeds in the law in fee simple, free from any right or claim of equity of redemption of the building company, its successors or assigns, and freed from all and every the trusts and liens hereby created, and without liability upon the purchaser or purchasers to see to the application of the purchase money, and without obligation to inquire into the necessity, expediency, or authority of or for any such sale (which shall be a perpetual bar both in law and in equity against the building company, and all persons claiming or to claim the aforesaid buildings, lands, tenements, and hereditaments, property, and appurtenances, so sold, or any part thereof, or any interest therein, by, from, or through the building company), and after deducting from the net proceeds realized by means of such use and occupation, and from such sale, or from either, all proper costs, charges, and disbursements incurred in or about the premises, including attorney and counsel fees, and all other expenses, advances, or liabilities which have been made or incurred by said trustee, including repairs, liens, insurance, taxes, or assessments, as well as reasonable compensation for its own services, the trustee shall apply the balance of such net proceeds to or towards the payment or discharge of the principal and accrued interest of or upon the said bonds which shall then be outstanding and unpaid, whether the same by the tenor thereof be then due or to become due, and without giving preference, priority, or distinction of one bond over another; such payment to be made in full if the said purchase money be sufficient, but if not, then pro rata; rendering or paying any surplus which may remain after the payment in full of the principal and interest of the aforesaid bonds to the building company, its successors or assigns, for its or their sole use and benefit.

Or the said trustee, upon the receipt of such declaration and request, and upon like security and indemnity, or without such declaration or request, or security and indemnity, in its discretion, without entering upon the possession of said property as aforesaid, may in its own name or otherwise proceed to protect and enforce the rights of all of said bondholders secured hereby by a suit or suits in equity or at law, whether for the specific performance of the stipulated covenants and agreements, or any of them, contained herein or in said bonds, or otherwise, as the said trustee being advised by counsel learned in the law shall deem most effectual to protect and enforce such rights. It being understood, and it is hereby expressly declared that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other rights, liens, or remedies allowed by law, and that the same shall not be deemed in any manner whatever to deprive the trustee or any beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof, or to waive or affect the right of the trustee to any action or right of action, or lien or right of lien, which otherwise may be vested in it or the bondholders secured hereby. And the building company hereby agrees that, in case of any default on its part as aforesaid, it will not

set up, claim, or seek to take advantage of any valuation, stay of execution, appraisement, or extension laws which may or might prevent, postpone, hinder, or delay the exercise of the right of the trustee to enter upon, take possession of, operate or sell the mortgaged property, or any part thereof, or the immediate enforcement or foreclosure of this mortgage, or the absolute sale of the said mortgaged property hereunder, without and free from appraisement, valuation, stay, or other condition or hindrance, but will and does hereby waive the benefit of any and all such valuation, stay, appraisement, or other laws to such effect as aforesaid.

PROVIDED, however, that in case of default being made as provided in this third article, and of proceedings being thereupon taken, excepting only the default in payment of the principal moneys of said bonds, if said building company shall, before the date of any sale by or on behalf of the trustee under such default, pay to the said trustee, with interest, any and all sum or sums of money that may be up to that time due for interest upon the bonds secured hereby, any annual sinking fund payments, or for any taxes, assessments, or liens, or for any premiums of insurance, or for any costs, expenses, or charges of the said trustee upon such default or otherwise, or for any other amounts which the said building company shall then be liable for and which it should theretofore have paid hereunder, and if said building company shall do and perform any and all other acts or things which may be necessary to fully and completely relieve it from any such default or omission or neglect hereunder, then and in that case the said default shall be opened, vacated, and annulled, and said sale shall not take place, and said building company shall be restored to all its rights, interests, and privileges hereunder as though the said default had not in any way taken place.

PROVIDED, ALSO, that no proceedings in law or in equity shall be taken by any holder of any of the bonds issued hereunder to foreclose the equity of redemption, or to do any other act or thing provided in this third article of this agreement, independently of the trustee, except after requisition shall have been made to the said trustee in the manner and form hereinbefore provided, and also until after the refusal of the trustee to comply with such requisition according to the provisions herein made in respect thereto.

ARTICLE 4. It is further provided that no failure on the part of the holders of the [one-third] of such bonds in respect to which a default in the payment of any semi-annual interest upon said bonds shall have occurred or continued, to make such instrument in writing and request, and to offer to said trustee such security and indemnity, or to do any other act, shall extend or be taken to effect any subsequent default in the payment of any subsequently accruing installment of interest, or sinking fund, or other payment, or other act to be done hereunder, or impair the rights resulting therefrom.

ARTICLE 5. At any sale of the said lands, tenements, and hereditaments, and appurtenances, or other property, or either or any of them, or any part thereof, whether made by virtue of any power herein granted or by judicial authority, the trustee may bid for and purchase the same, or any of them, or cause the same, or any of them, to be bid for and purchased for and on behalf of all the holders of the bonds hereby secured and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion thereof be sold, or if the whole of said mortgaged property shall be sold, then at a price not exceeding the total amount of

such bonds outstanding, with the interest accrued thereon, and the expenses of such sale, and any other sum or sums of money that it has paid or may be entitled hereunder to pay. In case of a sale of the herein mortgaged property, or any part thereof, either by the trustee, or in the course of judicial proceedings as hereinbefore provided, the purchaser or purchasers at such sale in making payment of the purchase money shall, after making a cash payment sufficient to cover the costs and expenses of the sale and all other charges which must be provided for in actual cash, have the right to deliver, and pay and turn in, and use towards the payment of the purchase money any of the bonds or coupons secured hereby, and held by him or them, to or towards which the net proceeds of such sale shall be legally applicable, counting such bonds or coupons for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds or coupons as his or their just share of such net proceeds, after allowing for the proportion of payment that may be required in cash for the costs and expenses of the sale; and, if such share of such net proceeds shall be less than the amount then due upon such bonds or coupons, to make settlement by receipting upon all such bonds or coupons the amount to be credited thereupon, as aforesaid. And in the event of a purchase of the lands, tenements, and hereditaments, and appurtenances, or other property, or either or any of them, as aforesaid, by said trustee, the right and title thereto shall vest in said trustee in trust for the bondholders, and each holder of the bonds or coupons joining in said purchase and contributing his proportion of the cash expenses thereof shall have an interest in the property so purchased in the proportion that his bonds and coupons shall bear to the entire amount of bonds and coupons then outstanding.

ARTICLE 6. The building company for itself, its successors and assigns, hereby covenants and agrees to and with the said trustee, that it will, on or before the 1st day of April, A. D. , pay over and deliver to said trustee, its successor or successors in this trust, the sum of forty thousand dollars (\$40,000) in current funds or gold coin of the United States of America of the present standard weight and fineness, and that said building company will thereafter annually, on the first day of April in each year during the continuance of this trust, pay over to said trustee, the sum of forty thousand dollars (\$40,000), as aforesaid, until the sum so paid by said building company and in the hands of said trustee shall equal the amount of the indebtedness with interest thereon hereby secured; Provided, however, and it is expressly understood and agreed that said building company may, in lieu of said first mentioned sum of forty thousand dollars (\$40,000), or in lieu of any or all subsequent payments of forty thousand dollars (\$40,000), each, deliver to said trustee one hundred (100) of the bonds hereby secured, and said trustee shall thereupon cancel said one hundred (100) bonds so delivered, and give to said first party a receipt and discharge for such annual payment to be as aforesaid made, and in lieu of which said bonds were so received.

It is understood and agreed that said trustee shall invest the moneys by it so received from time to time from said building company on said annual payments of forty thousand dollars (\$40,000) each, as provided in this sixth article hereof, in such securities as its board of directors shall authorize.

ARTICLE 7. The said building company shall have the right to redeem and

pay and cancel on the day of , A. D. 190 , and on the first day of in each year thereafter, any or all of the bonds secured hereby, by paying for the bonds so redeemed the sum of four hundred and forty dollars (\$440) for each four hundred dollar (\$400) bond and all accrued interest thereon. The building company shall, not less than ninety (90) days before such proposed redemption, give written notice to the trustee of the number of said bonds which it so desires to redeem and pay, and the serial numbers of the bonds so to be redeemed and paid shall be ascertained by the trustee by drawing lots in the manner following, viz.; the trustee shall cause to be prepared cards of equal size containing the numbers of all outstanding bonds, one number on each card, and a drawing by lot shall then be made in the presence of a notary public until the requisite amount of the bonds shall have been drawn, the result of which drawing shall be certified by said notary under his hand and official seal, describing by numbers the bonds so drawn, and a copy of such certificate of drawing shall thereupon be delivered to the trustee and a copy to the president or treasurer of the building company, and a copy to the agents of the building company in Amsterdam, Holland. Notice of the numbers of the bonds thus drawn shall thereupon be given by the building company by advertisement published once a week for six weeks in a newspaper published in the city of , stating the numbers of the bonds so drawn for redemption, and the time for the presentation and surrender thereof for redemption at the office of the agents of the building company in Amsterdam, Holland, which time shall not be less than forty-five (45) days from the date of the beginning of such publication. The building company shall, on or before such respective first days of , deposit with the trustee proof of such publication, and a written statement of the agents of the building company in Amsterdam, that said company has provided for the payment in Amsterdam, Holland, of the money requisite to redeem and pay the number of bonds so designated and drawn, and all interest thereon to said respective dates of redemption, in the manner hereinafter and in the eighth article hereof agreed and set forth, and upon such deposit and publication having been made, as aforesaid, and after the date so fixed for redemption and surrender, the bonds of the numbers designated in such publication shall, upon presentation to the agents of the building company in Amsterdam, be paid, and by said agents returned to the trustee, and by the said trustee canceled and returned so canceled to the building company, and the debt of the building company shall to that extent be extinguished, and after such date for presentation and surrender all interest shall cease on the bonds so called.

ARTICLE 8. All payments of principal and interest upon the bonds secured hereby shall be made at the office of , agents of the building company, duly appointed in Amsterdam, Holland, or their successors, as hereinafter in the thirteenth article hereof provided, and it is hereby agreed that remittances by the said building company to meet such interest and principal at maturity shall be made by it so as to reach said agents at Amsterdam, Holland, five (5) days, or their correspondents in New York city twelve (12) days before the date of such payment or maturity of such bonds.

ARTICLE 9. And the building company doth hereby covenant and agree for itself, its successors and assigns, to and with the trustee and its successor or successors in said trust, and with such persons, firms, or corporations as

shall from time to time become or be the holders of any of the bonds issued hereunder, that the building company shall and will at any time or at all times hereafter, and in the manner herein set forth, provide for and pay the principal and interest of and upon the bonds hereinbefore recited and described, as the same become due and payable, and that the building company will in due season pay, satisfy, and discharge all assessments, taxes, liens, and charges that shall be lawfully assessed, charged, or imposed upon this mortgage, or upon the bonds and obligations intended to be secured hereby, or upon the premises and property covered hereby, or any part or portion thereof, and deliver to said trustee, its successor or successors, annually on demand, the receipts of the proper officials or persons showing the payment of all such taxes, assessments, liens, and charges, until the indebtedness intended to be hereby secured shall be fully paid.

The building company shall and will keep all buildings, machinery, movable property, and fixtures that may be at any time upon said premises during the continuance of the indebtedness herein provided for, and covered by the provisions hereof, insured in such company or companies as the trustee may from time to time direct, for such sum or sums as such company or companies will insure for, to the fair insurable value thereof, not less than the amount of three hundred thousand dollars (\$300,000) in all, or if the principal amount of the bonds then outstanding shall be at any time less than three hundred thousand dollars (\$300,000) then in an amount equal to such principal of such bonds then outstanding; such insurance to be for the benefit of the trustee, and the policies of such insurance to contain the usual mortgage provisions that any loss thereunder shall be payable to the trustee hereunder, as its interests may then appear; and the building company shall deposit the policies of insurance or certificates thereof with the trustee, and unless said policies of insurance, and said mortgage provisions, shall be without any pro-rating clause, then all the policies of insurance on said property and premises, whether in excess of said sum of three hundred thousand dollars, (\$300,000) or not, shall be made payable in case of loss to and be deposited with the trustee; and in case of the neglect or refusal of the building company thus to insure, and secure to said trustee the beneficial interest in such policy or policies of insurance, or to pay any taxes, assessments, or liens for labor or materials, or otherwise, and any charges as aforesaid, such trustee may at its option cause insurance to be effected in such companies and in such manner as it may from time to time think best, and may pay such liens, taxes, or assessments, or purchase any outstanding certificates of tax sales thereof, or pay any other sum or sums of money that to it shall seem necessary for the protection of the lien of these presents, and to keep these presents a first lien upon said premises, and thereupon the building company shall and will on demand pay the premiums of such insurance, and all moneys thus paid for liens, taxes, assessments, and such other expenses or disbursements as may be incidental thereto, or provided for herein, with the interest thereon at six per cent. per annum, and all such moneys thus paid, with interest, as aforesaid, shall become an additional indebtedness secured by this mortgage, and to be paid out of the proceeds of the sale of the property, as aforesaid, if not otherwise paid by the building company.

And in case of any loss or damage by fire of or to any part of the insured premises the money recoverable under such policy or policies shall be recovered by and in the name of and be payable to the trustee, which shall, if the building company shall, within sixty (60) days from the date of such loss notify the said trustee of its desire to have such property restored, expend the said money, less its expenses, costs, and disbursements in recovering the same, in restoring the property so destroyed, so far as the amount recovered on said policy or policies shall be sufficient for that purpose, and deducting also therefrom a reasonable compensation for its services in that behalf; and the property when so restored, or so far as the same may be restored, shall be subject to all the provisions of this mortgage or deed of trust, including insurance; and unless the building company shall so notify the trustee, the trustee shall apply the amount so recovered, less its costs and expenses and a reasonable compensation for its services in that behalf, to the purchase and retirement of so many of said bonds, as such money will purchase upon the terms and conditions hereinbefore provided.

ARTICLE 10. And the building company doth hereby covenant with the trustee, and its successors, that the building company shall and will at any time, and at all times hereafter, upon reasonable request, make, do, execute, and deliver all such other and further reasonable assurances, acts, deeds, and things as in the opinion of competent counsel may be necessary or proper to effectuate the lien and security hereby intended to be created. And the building company for itself, its successors and assigns, further covenants and agrees to and with the said trustee that at the time of the enrolling and delivery of these presents it is well and lawfully seized of said premises above described, and has a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple therein, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form, as aforesaid, and that the same are free from all other and former grants, mortgages, judgments, levies, liens, and incumbrances, and from taxes, assessments, and sales therefor, of any name, kind, nature, or description whatsoever; and the same in the peaceable and quiet possession of the party of the second part, its successor or successors in the trust hereby created, and its or their assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the building company will warrant and forever defend.

ARTICLE 11. The trustee hereinbefore named, or any trustee hereunder, may be removed by an instrument in writing under the hands of a two-thirds in amount of the holders of the then outstanding bonds. It is further mutually agreed that in case of the dissolution, resignation, or inability to act of the said trustee, or in case of the removal of the said trustee by any court of competent jurisdiction, or in case of the removal of the trustee by the bondholders as hereinbefore provided, a new trustee may be appointed by the holders of two-thirds in amount of the then outstanding bonds by an instrument in writing signed by them, or by the appointment of such new trustee by any court of record in the county of _____ and state of _____, upon the nomination of the holders of not less than two-thirds of the bonds then outstanding. It is also mutually agreed between the parties hereto that the word "trustee" when and as used in these presents, and in the bonds secured

hereby, is intended to refer to and describe, and shall be construed to mean the body or bodies corporate, or person or persons which or who for the time being shall be charged with the execution of the trusts under these presents, whether the same be the said party of the second part, or any successor or successors of the said party of the second part, and that every trustee of these presents shall be entitled to the ordinary indemnity and security and right to reimbursement given to trustees, and that every trustee hereunder shall be entitled to be paid, for all services by it rendered, by the building company out of the income of the trust property hereunder or otherwise, and shall not be answerable for any errors or mistakes made by it or him in good faith, but only for the gross neglect or wilful default in the discharge of its, his, or their duties as trustee, and also that every such trustee shall be entitled to just compensation for all services which it, he, or they may render under this trust, and that every trustee hereunder may at any time resign from the trust by notice in writing mailed, properly addressed, to the building company and to the agents of said company in Amsterdam, Holland, at least sixty (60) days before such resignation shall take place.

ARTICLE 12. Subject to the security hereby created for the due payment of the principal money and interest mentioned in said bonds and for the performance and observance of the conditions and obligations thereby or by this deed imposed on the building company, said trustee shall stand possessed of all and singular the premises and property hereinbefore referred to and intended to be conveyed, transferred, and assigned, or which may in any manner become subject to the lien and trusts hereof, and the property and effects for the time being representing the same; in trust, nevertheless, and provided always that if the building company, its successors and assigns, shall well and truly pay the sums of money, principal and interest, and sinking fund payments, according to the terms and conditions hereof, and of the bonds secured hereby, as the same shall mature and become due and payable, and any and all other amounts payable by it under the provisions hereof, which said sums the building company doth hereby covenant and agree to pay as the same shall become due and payable, and shall well and truly keep and perform all the covenants, agreements, and undertakings herein and hereby assumed and required to be kept and performed according to the true intent and meaning of these presents, then and in that case, the estate, right, title, and interest of the said trustee or its successors in and to the said lands, tenements, and hereditaments, or other property, or either of them, or any part thereof, shall cease and determine and become void, and the said trustee shall by a sufficient instrument in writing, if so requested by the building company, execute a release of this deed of trust or mortgage, whereby all the estate, title, right, and interest of the said trustee shall cease and determine. And the trustee hereby accepts the trusts herein created, and covenants to execute the same; provided, however, that the building company shall have the right to fix a time, after the maturity of the bonds secured hereby, at which payment of all unpaid bonds shall be made by it at the office of the agents of the company in the city of Amsterdam, Holland, and to give notice thereof for a period of at least three (3) months, by advertisement published weekly in one newspaper in the city of Amsterdam, Holland, and in such other newspapers elsewhere as the trustee may direct, and as to all such bonds as may not be presented for payment

pursuant to such advertisement, the building company shall have the right, at its election, either to pay the amount of the principal and interest thereon to such date so fixed as aforesaid, to the trustee herein for the time being, whereupon it shall be the duty of such trustee to enter satisfaction in full upon said mortgage, or grant a release with like effect as though paid to such bondholders at maturity, and retain the amount so paid by the building company for the benefit of the holders of such unrepresented bonds, or else to require the trustee for the time being to enter satisfaction upon such mortgage or grant a release thereof to the extent of the amount of bonds already paid and surrendered, allowing the mortgage to stand thereafter as security only to the extent of the unrepresented bonds, with interest thereon, up to the date so fixed as aforesaid, after which all interest shall cease and determine upon all such unrepresented bonds.

ARTICLE 13. In case of the dissolution of the said _____, such agents of the building company, as now or hereafter constituted, or the ceasing thereof to do business, the said building company is hereby authorized, from time to time, to name in writing, filed with said trustee, some other responsible firm or corporation in said city of Amsterdam, Holland, where the principal and interest of the bonds secured hereby shall be payable; and thereupon all the provisions hereof, or of the bonds secured hereby, in relation to the agents of such building company, in Amsterdam, Holland, shall be and become applicable to each new agent or agents so appointed as aforesaid.

ARTICLE 14. In case at any time it shall be necessary and proper for the trustee to make any investigation respecting any facts preparatory to taking or not taking any action, or doing or not doing anything, as such trustee, the certificate of the building company, under its corporate seal, attested by the signature of its president and the affidavit of one or more directors, shall be conclusive evidence of such fact to protect the trustee, in any action that it may take by reason of the supposed existence of such facts.

The trustee shall be entitled to be reimbursed all proper outlays of every sort or nature by it incurred or paid out hereunder or in the discharge of its trust, and to receive a reasonable and proper compensation for any services that it may at any time perform in the discharge of the same; and all such fees, commissions, compensation, and disbursements shall constitute a lien on the property and premises mortgaged hereunder.

ARTICLE 15. The building company, for itself, its successors and assigns, in consideration of the premises, hereby constitutes and appoints the trustee its agent for the transfer and registration of said bonds, and hereby agrees that it shall be reimbursed for its services as such agent, in the same manner as hereinbefore provided in relation to this trust.

ARTICLE 16. All the provisions hereof, and of the bonds secured hereby, shall bind and be obligatory upon the successor or successors and assigns of the several parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be hereunto subscribed by their respective officers duly authorized, and their respective corporate seals to be affixed, attested by their respective secretaries, on the day and year first above written.

[Signatures, etc., as in Form 1320.]

1320. **First Mortgage on Railroad, Full Form.**

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , by and between the Railroad Company, a corporation duly organized and existing under the laws of the state of , hereinafter called the railroad company, party of the first part, and the Trust Company, of , a corporation duly organized and existing under the laws of the state of , hereinafter called the trustee, party of the second part,

WITNESSETH as follows [*the recitals of the organization and powers of the mortgagor and of its right and authorization to execute the mortgage, and of any facts which are essential to the validity of the mortgage should be given in full, and will vary in every mortgage. The form here given is a usual one*].

WHEREAS, the railroad company is a corporation duly organized under and by virtue of the laws of the state of [*here insert the particular laws under which the railroad company is organized and authorized to borrow*]; and

WHEREAS, the railroad company requires to borrow money for the purpose of extending and equipping its railroad and of paying its floating indebtedness, and for the purpose of raising money which will be required for its extensions and improvements, and for its other corporate purposes; and

WHEREAS, at the annual meeting of the stockholders of the railroad company, held at its principal office in , in the said state of , on the day of , it was unanimously

Resolved, That the board of directors of the Railroad Company be and it hereby is given the consent of the stockholders of this company, and it is hereby authorized, directed, and empowered to create an issue of bonds of this company to an amount not to exceed dollars, for the purpose of extending and equipping the railroad of this company, and of paying its floating indebtedness, and for the purpose of raising money which will be required for its extensions and improvements, and for its other corporate purposes, such bonds to be secured by a deed of trust or mortgage upon the property and franchises of the company in such manner and on such terms as to the board may seem fit, and that the said mortgage shall be duly executed in the name of this company and sealed with its corporate seal by the president and secretary of this company, as may be determined by said board; and

WHEREAS, at a meeting of the board of directors of the Railroad Company, held on the day of , , the foregoing resolutions having been duly submitted and read, the following preamble and resolutions were adopted:

WHEREAS, for the purpose of extending and equipping the railroad of this company, and of paying its floating indebtedness, and for the purpose of raising money which will be required for its extensions and improvements, and for its other corporate purposes, it is necessary for the company to issue its bonds to the extent of dollars, to be secured upon the property and franchises of this company,

Resolved, That this company make and issue its bonds for the aggregate sum of million dollars, to be known as the first mortgage five per

cent. gold bonds of the _____ Railroad Company, such bonds to be of the denomination of one thousand dollars (\$1,000) each, and which shall be numbered consecutively from one to _____, both inclusive, and shall be substantially in the following form, to wit:

UNITED STATES OF AMERICA,
State of _____

No.

\$1,000

First Mortgage Five Per Cent. Gold Bond
of the _____ Railroad Company.
Total issue, \$ _____.

For value received, the _____ Railroad Company (hereinafter called the company) hereby acknowledges itself indebted to the bearer, or, if this bond be registered, to the registered owner hereof, in the principal sum of one thousand dollars (\$1,000) United States gold coin, and promises to pay the said sum at its office in the city of New York, on the _____ day of _____ 19____ and also to pay interest thereon at the rate of five per cent. per annum in like coin, at the same place on the _____ days of _____ and _____ in each year until said principal sum shall be fully paid, upon presentation and surrender at the office aforesaid of the interest coupons hereto annexed, as the same severally become due, and without deduction from either principal or interest for any tax or taxes which the company may be required to pay, or retain therefrom, under or by reason of any present or future law, and which it hereby agrees to pay.

This bond is one of a series of _____ bonds of the _____ Railroad Company of like amount, tenor, and date, amounting in the aggregate to the sum of _____ dollars, numbered consecutively from 1 to _____, both inclusive, all of which bonds are equally secured by a mortgage or deed of trust bearing date the _____ day of _____, _____, and executed by the company to the Trust Company, of _____, as trustee, of and upon all the property and franchises of the company mentioned in said mortgage or deed of trust, subject to the terms and conditions of which mortgage this bond is issued and held.

This bond is entitled to the benefits of a sinking fund to be maintained by the company and used as provided in said mortgage.

This bond is redeemable at the option of the company, its successors or assigns, on and after _____, 19____, on the conditions and in the manner provided in said mortgage.

This bond may be registered in the manner and with the effect provided in said mortgage.

This bond shall not be valid or obligatory until the certificate indorsed hereon shall be signed by the trustee under said mortgage.

IN WITNESS WHEREOF, said _____ Railroad Company has caused its corporate seal to be hereunto affixed and attested by its secretary and [SEAL.] these presents to be signed in its name by its president, this _____ day of _____, A. D. _____.

Attest:

Secretary.

Railroad Company.

By

President.

FORM OF COUPON OF WHICH THE FIRST IS TO BE MADE PAYABLE

\$ No.
 On the day of, the Railroad Company will pay to the
 bearer at its office, in the city of New York, the sum of dollars,
 in United States gold coin, for six months' interest on its first mortgage five
 per cent. gold bond No. Treasurer.

FORM OF TRUSTEE'S CERTIFICATE.

Trust Company hereby certifies that the within bond is one of the
 series and issues described in the mortgage therein mentioned.

Trust Company,

By

Trustee.

BE it further *Resolved*, That for the purpose of securing the payment of
 the said bonds and the interest which shall accrue thereon, this company
 make, execute, and deliver to the Trust Company of, as trustee,
 a deed of trust or mortgage of all its property and franchises now belonging
 to the company, or which shall hereafter be acquired or used by this company
 in connection therewith, such deed of trust or mortgage to be in trust for
 the benefit and security of the holders of such bonds to the extent aforesaid,
 without preference, priority, or distinction as to lien or otherwise.

Resolved, That until the said bonds or obligations of the company for one
 thousand dollars (\$1,000) each, intended to be secured by the said deed of
 trust shall be engraved, executed, and delivered, the said bonds or obligations
 of the company, or any of them, may be represented by one or more written
 or printed obligations of this company, of the same aggregate amount, in
 such form and bearing such dates as the president of this company shall de-
 termine at the time of the execution and delivery thereof, and as shall be
 approved by the trustee, and such written or printed obligation or obliga-
 tions so issued shall have the same rights, remedies, lien, and security that
 appertain to the said bonds for one thousand dollars (\$1,000) each, when
 issued under the provisions of the said deed of trust or mortgage, and shall,
 until surrendered in exchange for a like amount of engraved bonds, represent
 the said indebtedness.

Resolved, That this company reserve the right to redeem and cancel on
 the first day of, A. D. 19, and on the first day of, in each
 year thereafter, during the currency of said bonds, the whole or any part
 of said bonds, by paying for the bonds so redeemed the principal thereof,
 and all accrued interest thereon, this company to give, not less than ninety
 days before the first day of April in each of such years, written notice to
 the trustee of the number of bonds which it so desires to redeem and pay,
 and the said trustee, upon receiving such notice, to ascertain and determine
 by lot the serial numbers of the bonds so to be redeemed and paid.

Resolved, That the president of this company be and he hereby is author-
 ized for and on behalf of this company, and as its act and deed, to affix its
 corporate seal to the said mortgage or deed of trust and said bonds and
 obligations, and to sign the same in the name of this company as such
 president, and to cause the same to be duly attested by the secretary, and when
 so executed in due form of law, to deliver and record the said deed of trust
 or mortgage.

Resolved, That the coupons to be attached to said bonds be authenticated by the engraved signature of the treasurer of this company who shall be in office at the time when any portion of said bonds shall be issued, it being intended that this company may adopt and use for that purpose the engraved signature of any person who shall have been its treasurer at the time when any portion of said bonds may have been issued, notwithstanding the fact that such person may have ceased to be the treasurer of this company.

AND the draft or form of the said deed of trust or mortgage having been duly submitted to, and read and examined by the board of directors at this present meeting, and having been found satisfactory, it was further unanimously

Resolved, That the deed of trust or mortgage so to be executed, delivered, and recorded by the president and secretary of this company, in its behalf and as its act and deed, as above authorized and directed, shall be in the form now submitted, which form is hereby adopted, ratified, and approved.

Now, THEREFORE, the said Railroad Company, party of the first part, under the authority and power aforesaid, and in consideration of the premises and of the mutual covenants herein contained, and of the sum of one dollar to it in hand paid by the Trust Company, party of the second part, on or before the ensembling and delivery of these presents, the receipt whereof is hereby confessed and acknowledged, and in order to secure the payment of the principal and interest of the bonds herein mentioned, has executed and delivered these presents, with all the covenants and conditions therein, and has granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed, confirmed, assigned, transferred, and set and delivered over, and by these presents does grant, bargain, sell, alien, remise, release, enfeoff, convey, confirm, assign, transfer, and set, and deliver over unto the Trust Company of , party of the second part, and to its successor and successors in the trusts hereby created, and to its and their heirs, executors, administrators, successors, and assigns forever, in trust, and for the uses and trusts hereby created, all and singular, the following railroads, estates, leases, leasehold interests, properties, rights, franchises, and privileges of the railroad company, that is to say [*here describe same fully*].

TOGETHER with all and singular, the franchises, rights, and privileges now or hereafter appurtenant to or used in connection with the line of railroad above mentioned, or any branch or leased or operated road thereof, † including any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, carhouses, engine-houses, freight-houses, woodhouses, machine shops, and other shops, turntables, water-stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind in any wise or at any time belonging or appertaining to such lines of railway, or to any branch or leased or operated line thereof, or provided for use thereon, or in connection therewith; and any and all lands designed for depots, warehouses, or other structures at any terminus, or on or along such lines of railway, or upon or along any such branch or leased or operated line; and any and all locomotives, engines, cars, and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture, and other chattels now possessed or hereafter acquired or provided for use upon such lines of railway, or branches, or upon any other line or branch, or upon any leased or operated line; and any and all leaseholds, leases, rights under lease, or contract, covenants, and agreements, terms or parts of terms now

held or hereafter acquired; and any and all property, real or personal, of every kind and description, now or hereafter acquired for use upon, or in connection with, or for the purpose of, such lines of railway, or any such branch, leased or operated line; and any and all corporate rights, privileges, and franchises which the railroad company now has, or hereafter can or shall acquire, possess, or exercise in, to, upon, or in respect of such lines of railway or branches, or any leased or operated line, or any part thereof, necessary for, or appertaining to, the construction, maintenance, or operation of such lines of railway, or any such branch, or leased or operated line, or any part thereof; and any and all the rents, issues, profits, tolls, and other income of such lines of railway, and of any and all branches or leased or operated lines; and also any and all the rights, privileges, franchises, properties, real or personal, rights and things which the railroad company may or shall hereafter possess, or become entitled to possess, for the purposes of, or in connection with, such lines of railway, or any such branch or leased or operated line.†

‡To HAVE AND TO HOLD all and singular the above-mentioned and described premises, railroads, properties, real, personal, or mixed, estates, rights, franchises, and appurtenances herein described and conveyed, transferred, or assigned, or intended to be hereby conveyed, transferred, or assigned, and the reversions, remainders, incomes, revenues, rents, issues, and profits thereof unto and to the use of the said Trust Company, its heirs, successor or successors, and assigns forever, according to the nature, tenor, and quality thereof, respectively.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all and every the present and future holders of any and every bond and interest obligation issued under and secured by this instrument, as well all those now issued, as all hereafter issued in addition thereto, or by way of substitution or exchange, in accordance with the terms of this instrument, and for enforcing payment thereof when payable, in accordance with the true intent and meaning of the stipulations of this agreement; and of said bonds and interest obligations respectively, without preference, priority, or distinction as to lien, or otherwise, of any one bond over any other bond by reason of priority in the issue or negotiation thereof, so that each and every bond, issued and to be issued as aforesaid, shall have the same right, lien, and privilege under and by this instrument, and the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if all had been made, executed, delivered, and negotiated simultaneously with the execution and delivery of this instrument; it being intended that the lien and security of all such bonds shall take effect from the day of the date of this instrument, without regard to the date of actual issue, sale, or disposition thereof, and so that the lien and security of this instrument, and of all bonds issued hereunder shall take effect from the day of the date hereof as though upon such day actually issued, sold, and delivered to, and in the hands of innocent holders for value.‡

First. The railroad company shall forthwith make, execute, and deliver to the trustee bonds of the railroad company, intended to be secured hereby, to an amount not exceeding in the aggregate dollars, which bonds for the amount aforesaid shall be countersigned and certified and delivered by the trustee, and until the said bonds shall be engraved, the railroad company

may execute and issue written or printed temporary bonds or obligations in such form or forms, and in such amounts and bearing such dates, as may be approved and countersigned or certified by the trustee, and which shall be entitled to all the security hereunder, and be exchangeable for or convertible into the bonds to be issued hereunder, and which shall be by the trustee cancelled upon such exchange or conversion being effected, and when such bonds or obligations are countersigned or certified by the trustee to the effect that they are issued under and secured by this deed or mortgage, such certificate shall be conclusive evidence that such bonds or obligations have been issued in accordance with, and are entitled to the security of this deed of trust or mortgage, whatever the form of such bonds or obligations may be [*here insert any provisions in relation to the terms on which bonds are to be issued, or any conditions which are to be complied with before the trustee shall certify or deliver the bonds.*]*

Second. Until default shall have been made in the due and punctual payment of the bonds secured hereby, or any of them, or of the interest thereupon, or of any of the sinking fund payments, or interest thereon, or other payments provided for herein, on the days, and at the times, or in the manner provided in said bonds, or herein respectively without further delay, and without deduction from either principal or interest for any tax or taxes, or charges which the company may be required to pay, or retain therefrom, and which the railroad company herein agrees to pay, and until any such default shall continue beyond the period of grace, if any, herein provided in respect thereof, or until proceedings of any kind shall be commenced against the said railroad company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage on the property hereby conveyed, or any part of it, or until the institution of any proceedings, either at law or in equity, whereby the control or ownership of the property hereby conveyed, or any part thereof, may be affected or disturbed, or until the railroad company shall do, or permit to be done, anything that may in any wise tend to diminish the value of the property and rights hereby conveyed, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or until the railroad company shall make default or breach in the due and punctual performance or observance of any covenants, or agreements hereof, to be performed and observed by the railroad company, the trustee shall permit and suffer the railroad company, its successors and assigns, to possess, manage, operate, and enjoy all the railroads, lands, tenements, and hereditaments, property, rights, privileges, and franchises hereby mortgaged and assigned, or intended to be mortgaged and assigned hereby, and to receive, take, and use the income, revenues, rents, tolls, issues, and profits thereof, in the same manner, and to the same extent, and with the same effect as if this instrument had not been made.

Third. If the said railroad company, its successors or assigns, shall at any time hereafter make default, or refuse, neglect, or omit for [six months] to pay the semi-annual interest on the bonds intended to be secured hereby, or any of them, or to make any other payment of the principal of said bonds, or otherwise, as provided herein, or shall suffer or allow any taxes, assessments, or charges to be or become in arrears, whereby the security of this mortgage may be impaired, or shall fail to pay and discharge any lien upon said premises for labor, or material, or otherwise, which the protection of the lien of this

* For this form of temporary bond, see No. 1328.

mortgage shall require to be paid, or shall fail to keep said premises insured with the provision that the loss thereunder shall be paid to the trustee herein as its interest may appear (as hereinafter more particularly specified and set forth); or, if proceedings of any kind shall be commenced against the said railroad company for the appointment of a receiver, or for the foreclosure of any deed of trust, or mortgage on the property hereby conveyed, or any part of it, or in case of the institution of any proceedings, either at law or in equity, whereby the control or ownership of the property, or any part thereof, herein mentioned, may be affected or disturbed, or in case the railroad company shall do, or permit to be done, anything that may in any wise tend to diminish the value of the premises or property hereby conveyed, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this agreement, or in case the railroad company shall make default or breach in the performance or observance of any other condition, obligation, or requirement in the said bonds or herein imposed upon the railroad company, or its successors or assigns, in reference to the said bonds, or the due performance of any covenants or agreements hereof,* * then, and in either of such events, the holders of [one-third] in amount of the said bonds secured hereby, and then outstanding, in respect to which such default shall have occurred, may by an instrument in writing, by them signed, and addressed and delivered to said trustee, notify said trustee of such default, and declare the principal of all said bonds due and payable, and in said instrument may also request the said trustee to proceed hereunder for the collection of the principal and interest of all the bonds then outstanding within a reasonable time after the receipt of such notice; and thereupon, and upon the giving of said notice, the entire principal of all the then outstanding bonds shall become immediately due and payable, anything in said bonds or herein contained to the contrary notwithstanding; and thereupon the trustee shall and will, upon receiving adequate security and indemnity against all costs, expenses, and liabilities to be by the said trustee incurred, or without such request or security or indemnity, it shall be lawful for the trustee in its own discretion forthwith to demand, and with or without process of law, and with such force as may be necessary, to enter upon, take, and maintain immediate and exclusive possession of all and singular the railways, lands, tenements, and hereditaments, premises, rights, privileges, and other property hereby conveyed and assigned, or intended to be conveyed and assigned, and as the attorney in fact, or agent of the railroad company, or in its own name as trustee, by itself, or by its agents and substitutes duly constituted and appointed, or by its managers, superintendents, receivers, or servants, to have, hold, use, manage, operate, lease, and enjoy the same, and each and every part thereof, to as full an extent as the railroad company might lawfully do, making from time to time all needful and proper repairs, alterations, and additions, and paying insurance, taxes, assessments, liens, and other necessary expenses connected therewith, and receiving all the revenues, rents, issues, incomes, and profits thereof, and after deducting the expenses of such use, operation, repairs, alterations, and additions, and the costs and charges of such taking possession, and proper compensation for such taking possession and management while in possession, and such sum or sums as may be sufficient to indemnify such trustee against any liability, loss, or damage for or on account of any matter or thing done in good faith in pursuance of the

duty of said trustee, it shall apply the remaining net income and revenue therefrom without preference, priority, or distinction of one bond over another, ratably and equally to the payment of accrued and accruing interest due on the said bonds then outstanding and intended to be hereby secured; and the trustee shall, as soon as practicable after such entering on and taking possession as aforesaid, or without such entering upon or taking possession, but upon like declaration and request in writing, and with security and indemnity, or without such security and indemnity, in the discretion of the said trustee, and with or without the order or decree of any court of equity, or other competent court having jurisdiction in the premises, and as by the trustee may be determined, or by said court may be ordered and decreed, sell and dispose of to the highest and best bidder or bidders, at public auction, and on such notice, and at such times and places as the trustee or court may authorize, but upon a notice of the time and place of such sale, by advertisement, published not less than once in each week, for not less than [sixty (60) days], in one or more daily newspapers of general circulation, published in the cities of New York, N. Y., and _____, and adjourn said sale or sales, from time to time, in its discretion, and if adjourning to make such sale or sales, at the times and places to which the same may be so adjourned, all and singular the lands, tenements, hereditaments, and appurtenances, and the estate and property, real, personal, and mixed, and all railways, elevators, machinery, tools, engines, implements, equipments, fuel, supplies, and materials, rights and privileges herein described, conveyed, transferred, and assigned, or intended to be hereby conveyed, transferred, and assigned; and thereupon to convey, transfer, assign, and deliver the same to the purchaser or purchasers thereof by good and sufficient deed or deeds, in the law in fee simple, free from any right or claim of equity of redemption of the railroad company, its successors or assigns, and freed from all and every the trusts and liens hereby created and without liability upon the purchaser or purchasers to see to the application of the purchase money, and without obligation to inquire into the necessity, expediency, or authority of, or for any such sale (which sale shall be a perpetual bar, both in law and in equity, against the railroad company, and all persons claiming, or to claim, the aforesaid railways, lands, tenements, and hereditaments, property, and appurtenances, so sold, or any part thereof, or any interest therein, by, from, or through the railroad company), and after deducting from the net proceeds realized by means of such use and occupation, and from such sale, or from either, all proper costs, charges, and disbursements incurred in or about the premises, including attorney and counsel fees, and all other expenses, advances, or liabilities which have been made or incurred by said trustee, including repairs, liens, insurance, taxes, or assessments, as well as reasonable compensation for its own services, the trustee shall apply the balance of such net proceeds to or towards the payment or discharge of the principal and accrued interest of or upon the said bonds which shall then be outstanding and unpaid, whether the same by the tenor thereof be then due or to become due, and without giving preference, priority, or distinction of one bond over another, or of the unpaid interest over the principal of such bonds; such payment to be made in full if the said purchase money be sufficient, but if not, then pro rata; rendering or paying any surplus which may remain after the payment in full of the principal and interest of the aforesaid bonds to the railroad company, its

successors or assigns, for its or their sole use and benefit. Or the said trustee, upon the receipt of such declaration and request, and upon like security and indemnity, or without such declaration, or request, or security and indemnity, in its discretion, without entering upon the possession of said property as aforesaid, may in its own name, or otherwise, proceed to protect and enforce the rights of all of said bondholders secured hereby by a suit or suits in equity or at law, whether for the specific performance of the stipulated covenants and agreements, or any of them, contained herein, or in said bonds, or otherwise, as the said trustee being advised by counsel learned in the law, shall deem most effectual to protect and enforce such rights. Provided, however, that in case of default being made as provided in this third article, and of proceedings being thereupon taken, excepting only the default in the payment of the principal moneys of said bonds, if said railroad company shall, before the date of any sale by or on behalf of the trustee, under such default, pay to the said trustee, with interest, any and all sum or sums of money that may be up to that time due for interest upon the bonds secured hereby, or for any taxes, assessments, or liens, or for any premiums of insurance, or for any costs, expenses, or charges of the said trustee upon such default, or otherwise, or for any other amounts which the said railroad company shall then be liable for, and which it should theretofore have paid hereunder, and if said railroad company shall do and perform any and all other acts or things which may be necessary to fully and completely relieve it from any such default or omission, or neglect hereunder, then and in that case the said default shall be opened, vacated, and annulled, and said sale shall not take place, and said railroad company shall be restored to all its rights, interests, and privileges hereunder as though the said default had not in any way taken place.

Fourth. The exclusive right of action hereunder shall be vested in the trustee until refusal on its part so to act, as herein provided, and no holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding at law or in equity to foreclose hereunder, or for enforcing these presents, or for the appointment of a receiver, or for any other remedy hereunder, without first giving to the trustee written notice of the fact that the default has occurred and continued as herein provided; nor unless the holders of per cent. in amount of the bonds secured hereby and then outstanding, shall have made written request of the trustee, and shall have afforded to it reasonable opportunity, either itself to proceed to exercise the powers herein granted, or to institute such action, suit, or proceeding in its own name; nor unless they shall also have offered to the trustee adequate security and indemnity against all costs, expenses, and liabilities to be by the said trustee incurred, and such notification, request, and offer of indemnity are hereby declared in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture, and to any action or cause of action as aforesaid; it being understood and intended that no one or more holders of bonds or coupons shall have any right, in any manner whatever, to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, but that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of the outstanding bonds and

coupons secured hereby, except as herein otherwise provided. But it shall be lawful for the trustee in its own discretion, without such request or security or indemnity, to forthwith do any act, enforce any default, institute any suit, action, or proceeding in equity or at law, or do any other thing necessary for the execution of any trust hereof, or the enforcing of any remedy hereunder. It is expressly declared that the rights of entry and sale herein contained, and that the other remedies or rights herein conferred upon or reserved to the trustee or to the holders of bonds secured hereby, are not exclusive of any other rights or remedies, but are intended as cumulative remedies additional to all other rights, liens, or remedies given hereunder or existing at law or in equity, or by statute, and that the same shall not be deemed in any manner whatever to deprive the trustee or any beneficiaries under this trust of any legal or equitable remedy by judicial proceedings, or by statute, consistent with the provisions of this instrument, according to the true intent and meaning thereof, or to waive or affect the right of the trustee to any action or right of action, or lien or right of lien, which otherwise might be vested in it or the bondholders secured hereby.

Fifth. Upon proper indemnity to the trustee, the holders of a majority in amount of the outstanding bonds hereby secured, anything in this indenture contained to the contrary notwithstanding, shall from time to time have the right to direct and control any and all proceedings for any sale of the premises hereby conveyed and pledged, or agreed or intended so to be, or for the foreclosure of this indenture, or for the appointment of a receiver, or any other proceedings hereunder, and to instruct the trustee to institute, continue, or discontinue any proceedings hereunder; and no such action by the trustee or by such majority shall extend to, or be taken to affect, any subsequent default or to impair any right resulting therefrom.

Sixth. In case of any sale hereunder of the whole or any part of the property or rights mortgaged hereunder, whether made by virtue of any power herein granted or by judicial authority, the trustee may bid for and purchase the property or rights so sold, or any of them, or cause the same, or any of them, to be bid for and purchased for and on behalf of all the holders of the bonds hereby secured and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion thereof be sold, or if the whole of said mortgaged property shall be sold, then at a price not exceeding the total amount of such bonds outstanding, with the interest accrued thereon, and the expenses of such sale, and any other sum or sums of money that it has paid or may be entitled hereunder to pay. In case of a sale of the herein mortgaged property, or any part thereof, either by the trustee, or in the course of judicial proceedings as hereinbefore provided, the purchaser or purchasers at such sale, in making payment of the purchase money shall, after making a cash payment sufficient to cover the costs and expenses of the sale, and all other charges which must be provided for in actual cash, have the right to deliver, and pay and turn in, and use towards the payment of the purchase money any of the bonds or matured and unpaid coupons secured hereby, and held by him or them, to or towards which the net proceeds of such sale shall be legally applicable, counting such bonds or coupons for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds or coupons as his or their just share of such net proceeds, after allowing for the proportion of

payment that may be required in cash for the costs and expenses of the sale; and if such share of such net proceeds shall be less than the amount then due upon such bonds or coupons, to make settlement by receipting upon all such bonds or coupons the amount to be credited thereupon as aforesaid. In the event of a purchase by said trustee of the property or rights, or either or any of them as aforesaid, the right and title thereto shall vest in the trustee in trust for the bondholders, and each holder of the bonds or coupons joining in said purchase and contributing his proportion of the cash expenses thereof, shall have an interest in the property so purchased in the proportion that his bonds and coupons shall bear to the entire amount of bonds and coupons then outstanding. At any and every such sale any or all of the bondholders may bid for and purchase such property and rights, and upon compliance with the terms of sale, may hold and dispose of such property without further accountability therefor.

Seventh. All acts, requests, and directions of any holders of bonds hereby secured, asserting, enforcing, waiving, or affecting any right or remedy of the bondholders, or any right, remedy, or duty of the trustee, or in pursuance of any trust hereby created, or required hereby to be signed or executed by such bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such holders in person or by attorney-in-fact. Proof of the due execution of any such request or instrument by the holders of the requisite number of bonds shall be sufficient hereunder if it shall appear, in the manner hereinafter provided, that the persons so executing such instrument were contemporaneously the holders of the requisite number of bonds on or after the day of the execution of such request or other instrument by such holders. The fact and date of the execution by any person of any such request or other instrument may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the state of _____, that the person signing such request or other instrument acknowledged to him the execution thereof, or by affidavit of a witness to such execution. The holding and date of holding of bonds by any person executing such instrument, and the amounts and issue numbers of the bonds held by such person, may be proved by a statement in writing executed by any depository approved by the trustee (such statement being sworn to or acknowledged by such depository, or a managing agent thereof, before an officer authorized to take acknowledgment of deeds to be recorded in the state of _____), that such person had on deposit with such depository the bonds described in such statement at the date therein mentioned. Such proof shall be conclusive in favor of the trustee with regard to any action taken by it under such request or instrument. No failure, delay, or omission on the part of the trustee, or of any bondholder secured hereby, to exercise any right or power arising hereunder, from default or otherwise, shall exhaust or impair any such right or power, or be construed to be a waiver of any such default or an acquiescence therein, or to extend or be taken to affect any subsequent default in the payment of any subsequently accruing installment of interest or sinking fund, or other payment or other act to be done hereunder, or impair the rights resulting therefrom.

Eighth. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the trustee, or of the bondholders

under this indenture, the trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein and hereby conferred and provided to be exercised by the trustee upon the occurrence and continuance of default as hereinbefore provided, and as matter of right the trustee shall be entitled to the appointment of a receiver or receivers of the premises hereby mortgaged, or of any part thereof, and of the earnings, income, revenue, rents, issues, or profits thereof, with such powers as the court making such appointment shall confer.

Ninth. In the event of any sale, pursuant to any provision hereof, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale made by any court of competent jurisdiction, the whole of the property hereby mortgaged and pledged shall be sold in one parcel, and as an entirety, including all the rights, titles, estates, railroads, equipments, franchises, leases, leasehold interests, contracts, stocks, bonds, and other real and personal property of every name and nature; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be. And the trustee and its successors are hereby appointed the true and lawful attorney or attorneys, irrevocable, of the railroad company, in its name and stead, to make all necessary deeds and conveyances of property, and all necessary transfers of the shares of stock or bonds, or other obligations thus sold, and for that purpose it and they may execute all necessary acts of assignment and transfer, and may substitute one or more persons with like power, the railroad company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

Tenth. The railroad company, at any time hereafter, before full payment of the bonds secured hereby, and whenever it shall deem it expedient for the better security of such bonds, although there may then be no default entitling the trustee to enter into possession, may surrender and deliver to the trustee full possession of the whole or any part of the property, premises, and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery, the trustee, at its option, may enter into and upon the premises so surrendered and delivered, and may take and receive possession thereof, for such period fixed, or indefinite, as aforesaid; without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or of any part thereof, the trustee, from the time of its entry, shall and will work, use, manage, control, and employ the same, in accordance with the provisions of this indenture, and shall and will receive and apply the income and revenues thereof as herein provided. Upon application of the trustee, and with consent of the railroad company, a receiver or receivers may be appointed to take possession of, and to operate and manage, the whole or any part of said property, with all the rights, powers, and duties by this section conferred upon the trustee, and in every case when a receiver of the whole or any part of the said property shall be appointed under this section, or otherwise, the trustee, from and after the time when it shall become a party

to the proceedings in which such receiver shall be appointed, shall be entitled to receive all the income and profits of such property for the benefit of the holders of the bonds hereby secured.

Eleventh. Registered holders of [four-fifths] in amount of all the bonds hereby secured, and at the time outstanding, may, in their discretion, by writing, direct the trustee, at any sale or sales hereunder, to purchase the mortgaged premises for the use and benefit of all the holders of the bonds hereby secured then outstanding, and, when so directed, the trustee shall make such purchase for and on behalf of all the holders of outstanding bonds; and having purchased said property, the trustee shall have and hold the right and title thereto in trust for the benefit of all holders of outstanding bonds, in proportion to the amounts due upon such bonds; and in settling for the purchase price of the property so purchased, the trustee shall have power to receipt for the entire amount of the proceeds applicable to the payment of all such outstanding bonds and the interest thereon; and no bondholder shall have any claim to any portion of the proceeds of the property sold, or any interest in such purchase, other than for his proportionate share of the proceeds of such purchased premises, property, and franchises, as represented in a new company or corporation to be formed for the use and benefit of all holders of bonds hereby secured and then outstanding; and pursuant to such direction in writing of such holders of [four-fifths] in amount of the bonds then outstanding, the trustee shall transfer the property so purchased to a new corporation (which shall be organized in such manner and upon such terms and conditions as shall be so directed by such holders of [four-fifths] in amount of said bonds), in consideration of the issue of its stock, bonds, or debentures, and shall distribute and apply said stock, bonds, or debentures, according to any plan of reorganization or readjustment so agreed to by such holders of [four-fifths] in amount of the bonds then outstanding, or shall make disposition of the property purchased and of any cash collected thereon, or of any stock or bonds received in consideration thereof, in such manner and on such terms as so directed in writing by such holders of [four-fifths] in amount of said outstanding bonds; and in the organization of such new company, and in such plan of reorganization or readjustment, if so directed by such holders of [four-fifths] in amount of the outstanding bonds, but not otherwise, provision may be made for the interests of any or all of the holders of junior obligations of the railroad company, and its simple contract creditors, and its stockholders, or any of them, upon such terms and conditions as may be so approved by such holders of [four-fifths] in amount of said bonds: PROVIDED, however, that in case of any such purchase by the trustee upon such direction of such holders of [four-fifths] in amount of the outstanding bonds, and in behalf of all the holders of bonds secured hereby, all holders of bonds and obligations for interest thereon shall share ratably in such purchase, according to the amounts severally due upon the bonds and coupons held by them respectively, and that no preference or discrimination shall be made among the bondholders in the distribution of the new securities or other proceeds of the property so purchased by such trustee.

IT IS UNDERSTOOD AND AGREED, HOWEVER, that nothing herein contained shall be construed as rendering it obligatory upon the holders of [four-fifths] in amount of said bonds to direct the trustee as aforesaid, or to purchase said

property on behalf of the holders of all the outstanding bonds, it being agreed that, notwithstanding anything herein contained, any purchase may be made by or in behalf of bondholders for their sole use and benefit free from the claims of other bondholders, and shall be deemed so to have been made, unless expressly made by the trustee upon such an express direction of holders of [four-fifths] in amount of said bonds to purchase on behalf of all the bondholders.

Twelfth. In case of any default hereunder, continued as hereinbefore provided, if in order to preserve the franchises of the railroad company, and to avoid foreclosure and sale, involving the organization of a successor company, any plan of reorganization shall be proposed with provisions for the modification of this mortgage, so far as to authorize and require the creation of new liens upon the mortgaged premises prior and superior to the lien hereof; then and in every such case holders of [four-fifths] in amount of all outstanding bonds hereby secured, duly proved as herein provided, may, by writing, direct the trustee in behalf of all the holders of all bonds then or thereafter issued hereunder, to acquiesce in such provisions of such plan; which plan also may determine and provide for the interests of other creditors and lienors, and of the shareholders of the railroad company. This special power, however, is granted to such holders of [four-fifths] in amount of the bonds upon the express condition that no bond hereby secured, and then outstanding, shall be changed as to amount of principal, or rate, or dates of payment of interest. Thereupon, but not otherwise, the trustee shall, by writing, acquiesce in such provisions of such plan, and such acquiescence by the trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such provisions thereof. All such modifications so affecting this indenture, and the bonds and coupons hereby secured, shall be reduced to a written agreement between the railroad company and the trustee, and such agreement shall be recorded in the county of _____, state of _____, and thenceforth shall be deemed to be part of this indenture, and thereafter the lien of this indenture, and of the bonds hereby secured, shall be deemed to be and shall be subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement.

Thirteenth. Said railroad company, for itself, its successors and assigns, hereby covenants and agrees to and with the said trust company, that it will, on or before the first day of _____, 19____, pay over and deliver to said trust company, its successor or successors in this trust, the sum of _____ dollars, in current funds, or gold coin of the United States of America, of the present standard weight and firmness, and that said railroad company will thereafter annually, on the first day of _____, in each year, during the continuance of this trust, pay over to said trustee, the sum of _____ dollars as aforesaid, until the sum so paid by said railroad company, and in the hands of said trustee, shall equal the amount of the indebtedness, with interest thereon, hereby secured; provided, however, and it is expressly understood and agreed that said railroad company may, in lieu of said first mentioned sum of _____ dollars, or in lieu of any or all subsequent payments of each, deliver to said trustee _____ of the bonds hereby secured, and said

trustee shall thereupon cancel said bonds so delivered, and give to said first party a receipt and discharge for such annual payment, to be as aforesaid made, and in lieu of which said bonds were so received.

IT IS UNDERSTOOD AND AGREED that said trustee shall invest the moneys by it so received from time to time from said railroad company on said annual payments of dollars each, as provided in this thirteenth article hereof, in such securities as its board of directors shall authorize.

Fourteenth. The said railroad company shall have the right to redeem and pay and cancel on the first day of , 19 , and on the first day of , in each year thereafter, any or all of the bonds secured hereby, by paying for the bonds so redeemed the sum of dollars for each dollar (\$) bond, and all accrued interest thereon. The railroad company shall, not less than ninety (90) days before such proposed redemption, give written notice to the trustee of the number of said bonds, which it so desires to redeem and pay, and the serial numbers of the bonds so to be redeemed and paid shall be ascertained by the trustee by drawing lots in the manner following, viz.: the trustee shall cause to be prepared cards of equal size, containing the numbers of all outstanding bonds, one number on each card, and a drawing lot shall then be made in the presence of a notary public until the requisite amount of bonds shall have been drawn, the result of which drawing shall be certified by said notary, under his hand and official seal, describing by numbers the bonds so drawn, and a copy of such certificate of drawing shall thereupon be delivered to the trustee, and a copy to the president or treasurer of the railroad company. Notice of the numbers of the bonds thus drawn shall thereupon be given by the railroad company by advertisement published once a week for six weeks in a newspaper published in the city of , and in the city of New York, N. Y., stating the numbers of the bonds so drawn for redemption, and the time for the presentation and surrender thereof for redemption at the office of the trustee, in the city of New York, which time shall not be less than forty-five (45) days from the date of the beginning of such publication. The railroad company shall on or before such respective first days of , deposit with the trustee, proof of such publication, and upon such deposit and publication having been made, as aforesaid, and after the date so fixed for redemption and surrender, the bonds of the numbers designated in such publication shall, upon presentation to the trustee, be paid by the trustee, and by the trustee cancelled and returned so cancelled to the railroad company, and the debt of the railroad company shall to that extent be extinguished, and after such date for presentation and surrender all interest shall cease on the bonds so called.

Fifteenth. All payments of principal and interest upon the bonds secured hereby shall be made at the office of the railroad company, in the city of New York. In the event that notice shall at any time be given to the company that any bond certified and issued hereunder, has been lost, stolen, destroyed, or mutilated, upon the surrender of any such mutilated bond, or upon the filing with the trustee of satisfactory evidence of such loss or destruction, the railroad company, in its discretion, and upon proof satisfactory to it that such bond and the unpaid coupons thereof have been so lost, stolen, destroyed, or mutilated, and upon such terms, as to security and otherwise, as shall be

agreed to by the trustee, may issue, and the trustee may certify a new bond, bearing the same serial number, in lieu, substitution, or exchange for, and upon cancellation of the bond so mutilated, and in lieu of the bond so lost, stolen, or destroyed.

Sixteenth. The railroad company, for itself, its successors and assigns, in consideration of the premises, hereby constitutes and appoints the trustee its agent for the transfer and registration of said bonds, and hereby agrees that it shall be reimbursed for its services as such agent, in the same manner as hereinbefore provided in relation to this trust.

Upon presentation of any coupon bond which shall have been registered as aforesaid, with the order or assignment of the registered holder, the same shall be transferred upon the books of registry to the person named in such written order or assignment, and thereafter such transferee or transferees of such bond shall be held to be the owner or owners thereof, with all incidental rights and powers, and from time to time such transfers may be made as the registered holder of any such bond for the time being may direct as aforesaid. The registered holder of any such coupon bond shall also have the right to register the same as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal thereof shall be payable to any person presenting the same. Any holder of a coupon bond registered to bearer may cause such bond to be registered in the name of such holder with the same effect as a first registration thereof, and successive registrations as aforesaid may be made from time to time, as desired. Such registration of any coupon bond shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely.

Seventeenth. The personal property and chattels hereby conveyed, or intended so to be, and any and all other personal or other property now or hereafter used, or to be used, in connection with said real estate, and belonging to the railroad company, whether attached to said realty or disconnected therefrom, or partly attached and partly disconnected, shall be real estate for all the purposes of this instrument, and shall be held and taken to be fixtures and appurtenances of the said railroad and part thereof, and are to be used and sold therewith, and not separate therefrom.

Eighteenth. And the railroad company doth hereby covenant and agree for itself, its successors and assigns, to and with the trustee, and its successor or successors, in said trust, and with such persons, firms, or corporations as shall from time to time become or be the holders of any of the bonds issued hereunder, that the railroad company shall and will from time to time hereafter, and in the manner herein set forth, provide for and pay the principal and interest of, and upon the bonds secured hereby, and the sinking fund payments hereunder, as the same become due and payable, and without deduction from either principal or interest for any tax or taxes which it may be required to pay, or retain therefrom, under or by reason of any present or future law, and that the railroad company will in due season pay, satisfy, and discharge all assessments, taxes, liens, and governmental or other charges that shall be lawfully assessed, charged, or imposed upon this mortgage, or upon the amounts and obligations intended to be secured hereby, or upon the railroad or other property or rights secured hereby, or any part or por-

tion thereof, or the income and profits thereof, the lien of which might or could be held to be prior to the lien hereof, so that the priority hereof shall be fully preserved; and deliver to the trustee, annually on demand, the receipts of the proper officials or persons showing the payment of all such taxes, assessments, liens, and charges until the indebtedness intended to be hereby secured shall be fully paid.

The railroad company shall and will keep all buildings, machinery, movable property, fixtures, and rolling stock that may be at any time on said premises during the continuance of the indebtedness herein provided for, and covered by the provisions hereof, insured in such company or companies as the trustee may from time to time direct, for such sum or sums as such company or companies will insure for, to the fair insurable value thereof, such insurance to be for the benefit of the trustee, and the policies of such insurance to contain the usual mortgagee provisions that any loss thereunder shall be payable to the trustee hereunder, as its interest may then appear; and the railroad company shall deposit the policies of insurance or certificates thereof with the trustee, and unless said policies of insurance and said mortgagee provisions shall be without any pro-rating clause, then all the policies of insurance on said property and premises, whether in excess of the amount outstanding on said bonds or not, shall be made payable in case of loss to, and be deposited with the trustee; and in case of the neglect or refusal of the railroad company thus to insure and secure to said trustee the beneficial interest in such policy or policies of insurance, or to pay any taxes, assessments, or liens, for labor, or materials, or otherwise, and any charges as aforesaid, such trustee may at its option cause insurance to be effected in such companies, and in such manner as it may from time to time think best, and may pay such liens, taxes, or assessments, or purchase any outstanding certificates of tax sales thereof, or pay any other sum or sums of money that to it shall seem necessary for the protection of the lien of these presents, and to keep these presents a first lien upon said premises, and thereupon the railroad company shall and will, on demand, pay the premiums of such insurance, and all moneys thus paid for liens, taxes, assessments, and such other expenses or disbursements, as may be incidental thereto, or provided for herein, with interest thereon at six per cent. per annum, and all such moneys thus paid, with interest, as aforesaid, shall become and be an additional indebtedness secured by this mortgage, and to be paid out of the proceeds of the sale of the property, as aforesaid, if not otherwise paid by the railroad company.

And in case of any loss or damage by fire of or to any part of the insured premises, the money recoverable under such policy or policies shall be recovered by and in the name of and be payable to the trustee, which shall, if the railroad company shall, within sixty (60) days from the date of such loss, notify the said trustee of its desire to have such property restored, expend the said money, less its expenses, costs, and disbursements in recovering the same, in restoring the property so destroyed, so far as the amount recovered on said policy or policies shall be sufficient for that purpose, and deducting also therefrom a reasonable compensation for its services in that behalf; and the property, when so restored, or so far as the same may be restored, shall be subject to all the provisions of this mortgage or deed of trust, including insurance; and unless the company shall so notify the trustee,

the trustee shall apply the amount so recovered, less its costs and expenses and a reasonable compensation for its services in that behalf, to the purchase and retirement of so many of said bonds as such money will purchase upon the terms and conditions hereinbefore provided.

Nineteenth. The railroad company agrees that upon demand of the trustee, from time to time, it will grant, convey, confirm, assign, transfer, and set over unto the trustee, all real and personal estate, corporate rights, and franchises which in any way or manner it shall acquire as appurtenant to, or in, or for use upon, or for the business of, any railroad hereby mortgaged, or as appurtenant to, or in, or for use upon, or for the business of, any leasehold estate hereby mortgaged [including all railroads and leasehold estates which shall hereafter become subject to the lien of this mortgage], and it shall and will also make, do, seal, execute, acknowledge, and deliver, or cause to be made, done, sealed, executed, acknowledged, and delivered all and every such further acts, matters, things, deeds, conveyances, bills of sale, and transfers, and assurances in the law, for the better assuring, conveying, and confirming unto the trustee all and singular the hereditaments and premises, estates and property hereby conveyed, or intended so to be, or which are hereby covenanted and agreed hereafter to be conveyed to the trustee, as it, or its counsel, learned in the law, shall reasonably require for better effectuating and carrying out the provisions, objects, and purposes of this instrument, and for securing payment of the principal and interest of the bonds intended to be hereby secured; all which estates shall be held by the trustee in, under and upon the several and respective trusts, and for the uses and purposes, and subject to the powers herein mentioned, declared, given, implied, or expressed.

But nothing expressed or implied in this indenture is intended, nor shall it be construed, to limit the right or power of the railroad company, hereinbefore reserved, by the use of its credit or means other than the bonds secured hereby, to construct or acquire, either free from or subject to incumbrance, other lines of railway, branches, or extensions, or interests therein, and to assume or create liens thereon superior and prior to the lien hereof.

And the railroad company, for itself, its successors and assigns, further covenants and agrees to and with the said trustee that at the time of the ensealing and delivery of these presents, it is well and lawfully seized of said property and rights herein described, and has a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple therein, and has good right, full power and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free from all other and former grants, mortgages, judgments, levies, liens, and incumbrances, and from taxes, assessments, and sales therefor, of any name, kind, nature, or description whatsoever; and the same in the peaceable and quiet possession of the party of the second part, its successor or successors, in the trust hereby created, and its or their assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the railroad company will warrant and forever defend.

Twentieth. The railroad company covenants and agrees that it shall not and will not issue, negotiate, sell, or dispose of any bonds hereunder, in any manner other than in accordance with the provisions of this instrument, and the agreements in that behalf herein contained, and that in issuing, selling, negotiating, or otherwise disposing of such bonds, from time to time, it shall

and will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for purposes herein prescribed, and to and for no other or different purpose.

Twenty-first. The railroad company further covenants and agrees that it shall not and will not, at any time, insist upon or plead, or in any manner whatever set up, or claim, or take the benefit or advantage of, any stay law, or extension law, now or at any time hereafter in force in any locality where the mortgaged premises, or any part thereof, may or shall be situate, nor will it claim, take, or insist on any benefit or advantage from any law now or hereafter in force, providing for the valuation or appraisalment of the mortgaged premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales, will it claim or exercise any right under any statute enacted by the congress of the United States, or by the legislature of any state or territory, to redeem the property so sold, or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it agrees that it will not apply for, or avail itself of, any injunction or stay of proceedings, nor hinder, delay, or impede the execution of any power herein granted and delegated to the trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

Twenty-second. The railroad company further covenants and agrees that all lines of railway and property of every kind, and all interest therein, when and as, and to the extent hereafter acquired, as above provided, out of, or from bonds and the proceeds of bonds secured by this instrument, shall, without any further conveyance or assignment, immediately upon such acquisition, become and be subject to the lien of this indenture as fully and completely as though now owned by the railroad company, and expressly and specifically conveyed by, and embraced in, the granting clauses of this indenture.

Twenty-third. It is further mutually agreed that in case at any time it shall become necessary, or in the judgment of the trustee be for the interest of the bondholders hereby secured, or for the benefit of the mortgaged property, that the railroad company shall make changes or alterations in, or substitutions of, any leases, contracts, or trackage rights, by which the railroad company now secures access to any point or points, the railroad company, with the written consent of the trustee, may make any such changes, alterations, or substitutions.

The railroad company, with the written consent of the trustee, may make, or cause to be made, executed, and delivered, all such instruments in writing as may be proper and necessary to carry out and perfect any and all changes, alterations, or substitutions authorized in this article when and as the same may be made.

At the same time, ample provision shall be made by apt and sufficient instruments in writing, so that such modified, altered, or substituted leases, contracts, or trackage rights shall be, and forthwith become bound by, and subject to, the terms of this indenture in the same manner as the then existing leases, contracts, and trackage rights.

Twenty-fourth. It is mutually agreed that, provided there shall then be no continuing default in respect of which the trustee or bondholders by appropriate action shall then be asserting rights hereby conferred, the trustee,

upon request of the railroad company, at any time or times, in its discretion, may release from the lien and operation of this instrument, and of the bonds hereby secured, any premises acquired, held, or used by the railroad company for the purpose of stations, depots, shops, or other buildings or erections, or for other uses not connected with the maintenance or operation of some part of the lines of railway then subject to the lien of this instrument, or any premises which may have been acquired or held for the supply of gravel, fuel, and other materials for the purposes of such lines of railway; provided, that, in the judgment of the trustee, at the time of such release, such premises shall no longer be requisite for the purposes for which the same shall have been so acquired or used, or necessary or expedient to be retained for use in connection with such lines of railway, and likewise it may release any parts of the line of track or roadway, or of the depot grounds, buildings, or accommodations connected therewith, which, at the time of such release, may have been thrown out of use and have ceased to form part of such lines of railway by reason of the straightening, alteration, or abandonment of such part of the lines of railway; but the power of release given by this article is to be exercised only in case the railroad company shall sell or contract to sell the property so to be released, because no longer required for the uses or purposes of such railways, and shall require the same to be released, in order to give good title to the purchaser or purchasers thereof. The proceeds of any and all such sales shall be invested in the purchase of other property, real or personal, which shall be conveyed in trust by the railroad company to the trustee, subject to all the trusts hereby declared, or in the purchase of bonds hereby secured (which bonds shall forthwith be cancelled and delivered to the trustee), or in betterments or improvements, or in some other way, to the benefit of the mortgaged premises, and satisfaction of the trustee. When such released premises shall have been thrown out of use, or shall have ceased to be required, by reason of changes of the line of the road on or along the routes aforesaid, or any of them, or change of depot grounds, buildings, or other accommodations, the substitutes therefor acquired by the railway company, *ipso facto*, shall become and be subject to the lien of this indenture, the same as though specifically mortgaged hereby, and as a condition of such release they shall be conveyed to the trustee by appropriate deeds upon the trusts and for the purposes of this indenture. The railroad company, from time to time, shall also have full power, according to its discretion, to dispose of such materials, machinery, rolling stock, and other movable property, at any time held or acquired for the use of any lines of railway, as may have become old, worn out, disused, or undesirable, or not needed for use for said railroad, on substituting therefor other property of equal or greater value, which shall become subject to the operation of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this or the preceding article of this indenture be required to see to the application of the purchase money.

Twenty-fifth. No recourse under any obligation, covenant, or agreement of this instrument, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer, or director of the railroad company, either directly or through the railroad company, by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this mortgage and

the obligations hereby secured are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by the incorporators, stockholders, officers, or directors of the railroad company, or any or either of them, under or by reason of any or either of the obligations, covenants, or agreements in this instrument, or in any of the bonds or coupons hereby secured, expressed, and contained, or implied therefrom, and that any and all personal liability of every name and nature, either at common law or in equity, or by statute, of every such incorporator, stockholder, officer, or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such obligations.

Twenty-sixth. Subject to the security hereby created for the due payment of the principal money and interest mentioned in said bonds, and for the performance and observance of the conditions and obligations thereby or by this deed imposed on the railroad company, said trustee shall stand possessed of all and singular the premises and property hereinbefore referred to and intended to be conveyed, transferred, and assigned, or which may in any manner become subject to the lien and trusts herein, and the property and effects for the time being representing the same; in trust nevertheless, and provided, always, that if the railroad company, its successors and assigns, shall well and truly pay the sums of money, principal and interest, according to the terms and conditions hereof, and of the bonds secured hereby, as the same shall mature and become due and payable, and any and all other amounts payable by it under the provisions hereof, which said sums the railroad company doth hereby covenant and agree to pay as the same shall become due and payable, and shall well and truly keep and perform all the covenants, agreements, and undertakings herein and hereby assumed and required to be kept and performed, according to the true intent and meaning of these presents, then and in that case, the estate, right, title, and interest of the said trustee or its successors in and to the said lands, tenements, and hereditaments, railroad or other property, or either of them, or any part thereof, shall cease and determine and become void, and the said trustee shall by a sufficient instrument in writing, if so requested by the railroad company, execute a release of this deed of trust or mortgage, whereby all the estate, right, title, and interest of the said trustee shall cease and determine. And the trustee hereby accepts the trusts herein created, and covenants to execute the same; provided, however, that the railroad company shall have the right to fix a time, after the maturity of the bonds secured hereby, at which payment of all unpaid bonds shall be made by it at its office in the city of New York, and give notice thereof for a period of at least three (3) months, by advertisement, published weekly in one newspaper in the city of New York, and in such other newspapers elsewhere as the trustee may direct, and as to all such bonds as may not be presented for payment pursuant to such advertisement, the railroad company shall have the right, at its election, either to pay the amount of the principal and interest thereon to such date so fixed as aforesaid, to the trustee herein for the time being, whereupon it shall be the duty of such trustee to enter satisfaction in full upon said mortgage, or grant a release with like effect as though paid to such bondholders at maturity, and retain the amount so paid by the railroad company for the benefit of the holders of such unpresented bonds, or else to require the trustee for the time being to enter satisfaction upon such mortgage or grant a release thereof to

the extent of the amount of bonds already paid and surrendered, allowing the mortgage to stand thereafter as security only to the extent of the unrepresented bonds with interest thereon up to the date so fixed as aforesaid, after which all interest shall cease and determine upon all such unrepresented bonds.

Twenty-seventh. The trustee hereinbefore named, or any trustee hereunder, may be removed by an instrument in writing under the hands of a two-thirds in amount of the holders of the then outstanding bonds. It is further mutually agreed that in case of the dissolution, resignation, or inability to act of the said trustee, or in case of the removal of the said trustee by any court of competent jurisdiction, or in case of the removal of the trustee by the bondholders as hereinbefore provided, a new trustee may be appointed by the holders of two-thirds in amount of the then outstanding bonds by an instrument in writing signed by them, or by the appointment of such new trustee by any court of record in the county of _____, and state of _____, upon the nomination of the holders of not less than two-thirds of the bonds then outstanding. It is also mutually agreed between the parties hereto that the word "trustee," when and as used in these presents, and in the bonds secured hereby, is intended to refer to and describe, and shall be construed to mean the body or bodies corporate, or person or persons which or who for the time being shall be charged with the execution of the trusts under these presents, whether the same be the said party of the second part, or any successor or successors of the said party of the second part; and that every trustee of these presents shall be entitled to the ordinary indemnity, and security and right to reimbursement given to trustees, and that every trustee hereunder shall be entitled to be paid for all services by it rendered, by the railroad company out of the income of the trust property hereunder or otherwise, and shall not be answerable for any errors or mistakes made by it or him in good faith, but only for the gross neglect or wilful default in the discharge of its, his, or their duties as trustee, and also that every such trustee shall be entitled to just compensation for all services which it, he, or they may render in this trust, and that every trustee hereunder may at any time resign from the trust by notice in writing mailed, properly addressed, to the railroad company at least sixty (60) days before such resignation shall take place.

Twenty-eighth. It shall be no part of the duty of the trustee to record this instrument as a mortgage or conveyance of real estate, or to file or record the same as a chattel mortgage, or to refile or renew the same, or to procure any further, other, or additional instruments of further assurance, or to do any other act for the continuance of the lien of this indenture, or to give notice of the existence of the lien thereof, or to extend or supplement the lien sought to be created hereby; nor shall it be any part of the duty of the trustee hereunder [if mortgage contains insurance clause insert, to effect insurance against fire or other damage on any portion of the property hereby mortgaged, or to renew any policies of fire or other insurance, or] to keep itself informed or advised as to the payment of any taxes or assessments that may be imposed upon the property, real or personal, affected by this mortgage; or to require the payment of such taxes or assessments, but the trustee may, in its discretion, at the expense of the railroad company, do any or all of the matters or things in this article set forth, or require the same to be done.

Twenty-ninth. In case at any time it shall be necessary and proper for the trustee to make any investigation respecting any facts preparatory to taking

or not taking any action, or doing or not doing anything, as such trustee, the certificate of the railroad company, under its corporate seal, attested by the signature of its president and the affidavit of one or more directors, shall be conclusive evidence of such fact to protect the trustee, in any action that it may take by reason of the supposed existence of such facts.

Thirtieth. In order to facilitate the record of this instrument the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be original, and such counterparts shall together constitute but one and the same instrument.

Thirty-first. It is also further mutually covenanted and agreed that all the covenants, stipulations, promises, agreements, and provisions in this instrument contained, and of the bonds secured hereby, shall bind and be obligatory upon the successor or successors and assigns of the several parties hereto, whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be hereunto subscribed by their respective officers thereunto duly authorized, and their respective corporate seals to be affixed, attested by their respective secretaries, on the day and year first above written.

Sealed and delivered in the presence of

[CORPORATE SEAL.]

By

Railroad Company,

Attest:

Secretary.

President.

[CORPORATE SEAL.]

By

Trust Company,

Attest:

Secretary.

President.

This mortgage should have an acknowledgment, according to local laws, for each state or territory in which it is to be recorded. The forms of such acknowledgments, see chapter on ACKNOWLEDGMENTS AND PROOF OF DEEDS.

1321. Second Mortgage¹ on Railroad.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and between the Railroad Company, a corporation created by and existing under the laws of the territory and state of , hereinafter called the company, and the Trust Company, of New York, a corporation created by and existing under the laws of the state of New York, trustee hereunder, and hereinafter called the trustee.

WHEREAS, the company has constructed under its charter, and now owns and operates a railroad about miles in length, running from , on the river, in the state of , through , to a point on the western boundary of the state of ; and also owns and may during the period of this trust acquire a large amount of rolling stock used and to be used upon its said railroad, and upon other railroads leased, operated, or controlled by it; and,

WHEREAS, the said company likewise owns, among other property, the shares hereinafter specified of the capital stocks of other railroad companies forming parts of its system and of other corporations operated in connection therewith; likewise the equitable and beneficial interest in the shares

¹ This mortgage contains also many of the features of a collateral trust and equipment mortgage.

hereinafter specified of the capital stocks of other companies which are respectively owned by companies whose stocks are wholly owned or controlled by the company; likewise the bonds hereinafter specified of railroad and other companies forming parts of its said system; and,

WHEREAS, the hereinbefore described railroad, and rolling stock, and stocks and bonds are subject to a general mortgage, dated the day of , 188 , conveying the same to the said Trust Company of New York, as trustee thereunder, to secure the general mortgage bonds of said company, and subject to the priority of said general mortgage bonds, the principal of the income bonds therein named; and are likewise subject to certain mortgages, trusts, pledges, and liens set forth in said general mortgage and represented by the bonds and notes which have been and are to be acquired under the reorganization plan named in said general mortgage and deposited with the said trustee thereunder; and,

WHEREAS, there were issued or required to be issued under the terms of said reorganization plan and said general mortgage, million dollars of the income bonds of the company, in the forms set forth in the said general mortgage; and,

WHEREAS, the company has issued to the holders of its said income bonds a circular, dated , , called "Circular No. One," containing a plan of conversion of said income bonds, whereby said income bonds are to be exchanged for second mortgage bonds, to be issued by the company, a copy of which circular is hereto attached and marked Schedule A; and,

WHEREAS, for the purpose of carrying out said plan of conversion, and also for the purpose of providing for the expenditures from time to time necessary for improvements upon the railroads belonging to its said road and system as hereinafter more specifically defined, including equipment, as set forth in said Circular No. One, the company has resolved to issue its second mortgage bonds of two classes, called A and B; and to provide also for further issues of said bonds if necessary, all of said bonds to be equally secured by this second mortgage of the railroad and rolling stock and stocks, bonds, and other property hereby conveyed; and,

WHEREAS, said second mortgage bonds are all to be dated , , and to be payable , 19 , the principal and interest to be payable in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, and the interest to be payable semi-annually on the first days of April and October in each year.

The rate of interest of class A of said second mortgage bonds to be two and one-half ($2\frac{1}{2}$) per centum per annum for the three months ending September 30, , and also for the following year ending September 30, ; three (3) per centum per annum for the year ending September 30, ; three and one-half ($3\frac{1}{2}$) per centum per annum for the year ending September 30, , and four (4) per centum per annum thereafter until maturity; and the rate of interest of class B of said second mortgage bonds to be four (4) per centum per annum from their date until maturity; and the rate of interest of any further bonds issued under this mortgage to be likewise four (4) per centum per annum; and,

WHEREAS, said second mortgage bonds designated as class A are to be limited to the amount of million dollars, and are to be used only for exchange at par for said income bonds, and those designated as class B are

to be limited to the amount of million dollars, and are not to be issued in excess of million dollars in any one year, the proceeds thereof to be used only for the purposes hereinafter set forth, and after all of said bonds designated as class B shall have been issued, and their proceeds applied as hereinafter provided, the directors of the company may, if in their judgment it is expedient to do so, from time to time authorize the issue of further second mortgage bonds to an amount not exceeding million dollars of said bonds in any one year, and only in the manner and for the purposes hereinafter set forth, the aggregate of such further issues not to exceed a total limit of million dollars; and,

WHEREAS, the said second mortgage bonds are to be issued in denominations of five hundred dollars and one thousand dollars for the coupon bonds, and of five hundred dollars, one thousand dollars, ten thousand dollars, and fifty thousand dollars for the registered bonds, and are to be substantially in the forms following, the said forms being those of said class A bonds, and said class B bonds; and the forms of any further bonds issued hereunder to be the same as those of said class B bonds, with the omission of the designation "Class B."

(FORM OF SECOND MORTGAGE COUPON BOND, CLASS A.)

UNITED STATES OF AMERICA.

RAILROAD COMPANY.

Four Per Cent. Second Mortgage Gold Bond.

| | | |
|-----|----------|----------|
| No. | CLASS A. | \$500. |
| | | \$1,000. |

For value received, the Railroad Company promises to pay to bearer, or, in case of registration, to the registered holder hereof, the sum of dollars, on the first day of July, one thousand nine hundred and , together with interest thereon from the date hereof, until said principal sum has been paid, at the rate of two and one-half per centum per annum, until October 1, , and then at the rate of three per centum per annum until October 1, , and then at the rate of three and one-half per centum per annum until October 1, , and from said last-named date, at the rate of four per centum per annum until maturity, payable semi-annually, on the first days of April and October in each year, on the presentation and surrender of the coupons annexed hereto as they severally become due, both principal and interest being payable in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, at the agencies of said Company, in the cities of Boston or New York, or at the office of , London, England.

All payments upon this bond of both principal and interest are to be made without deduction for any tax or taxes which said railroad company may be required to pay or to retain therefrom, by any present or future laws of the United States of America, or any of the states or territories thereof, said railroad company hereby covenanting and agreeing to pay any and all such tax or taxes.

This bond is one of class A, of a series of second mortgage bonds, coupon and registered, the payment of which is secured by a second mortgage or deed of trust, duly executed and delivered by the Railroad Company, to the Trust Company of New York, trustee, bearing date , .

This bond shall pass by delivery, or if registered, by transfer upon the

transfer books of the company. After registration of ownership, certified hereon by the transfer agent of the company, the coupons shall remain negotiable, but no transfer of this bond, except on the books of the company, shall be valid, unless the last transfer is to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of each holder, or the holder may, at any time, at his option, surrender this bond and the annexed coupons to the company to be canceled, and receive in exchange therefor a registered bond of the same issue, and thereafter it shall not be transferable to bearer, but the interest shall be paid to the registered holder.

This bond shall be valid only when authenticated by the certificate hereon of the said trustee, or its successor in said trust, that it is one of the bonds issued under and described in the said indenture of trust.

IN WITNESS WHEREOF, the said Railroad Company has caused its corporate seal to be hereto affixed, and these presents to be signed [SEAL.] by its comptroller, or a deputy comptroller, and attested by an assistant treasurer, on this day of , .

Attest: Railroad Company,
By Comptroller.
Assistant Treasurer.

\$3.12½ (FORM OF COUPON No. 1.) No. 1.
\$6.25

On the day of , , the Railroad Company will pay to the bearer dollars in gold coin of the United States of America, or its equivalent, at its agencies in the cities of Boston or New York, or at the office of , London, being three months' interest on its second mortgage bond, class A, No. .

Assistant Treasurer.

\$6.25 (FORM OF COUPON No. 2.) No. 2.
\$12.50

On the day of , , the Railroad Company will pay to the bearer dollars in gold coin of the United States of America, or its equivalent, at its agencies in the cities of Boston or New York, or at the office of . London, being six months' interest on its second mortgage bond, class A, No. .

Assistant Treasurer.

| | | |
|---|---|--------|
| Coupon No. 3, October 1, | } | \$6 25 |
| | | 12 50 |
| Coupon No. 4, April 1, | } | 7 50 |
| | | 15 00 |
| Coupon No. 5, October 1, | } | 7 50 |
| | | 15 00 |
| Coupon No. 6, April 1, | } | 8 75 |
| | | 17 50 |
| Coupon No. 7, October 1, | } | 8 75 |
| | | 17 50 |
| Coupon No. 8 and all subsequent coupons (except the last) | } | 10 00 |
| | | 20 00 |

The last coupon payable July 1, 19 , will be for three months' interest and accordingly for \$5 and \$10, respectively.

(FORM OF TRUSTEE'S CERTIFICATE.)

The Trust Company, of New York, hereby certifies that this bond is one of the series of bonds issued under and described in the within-named indenture of trust to this company, as trustee, dated July 1st,

Trust Company of New York, Trustee.

By

[Form of Class B. bonds omitted.]

President.

AND WHEREAS, the coupons attached to the said second mortgage bonds are to bear the engraved signature of the assistant treasurer of the company, which shall be recognized by the company as having the same legal effect as if such signature had been written upon each of said coupons by such assistant treasurer:

NOW, THEREFORE, these presents witness that the said Railroad Company, in consideration of the premises and of the acceptance by the said trustee of the trust hereby created, and in order to secure the payment of the principal and interest of its said second mortgage bonds as herein set forth, doth by these presents grant, bargain, and sell, convey, transfer, and assign unto the said trustee, its successors and assigns, the following described property, to wit: [*here describe property, as in Form No. 1320*]; subject however, to the following incumbrances by way of mortgage, to wit:

1. The said general mortgage of _____; the first mortgage of _____, all the outstanding bonds secured by which are held by the trustee under said general mortgage excepting _____ dollars of said bonds; the consolidated mortgage of _____, all of the outstanding bonds secured by which are held by the trustee under said general mortgage; the guarantee fund mortgage of _____, securing the guarantee fund notes of the company, of which _____ million dollars are held by the trustee under said general mortgage and the remaining _____ million dollars are outstanding, the redemption of said guarantee fund notes being provided for by the setting aside of certain of the general mortgage bonds under the reorganization plan attached to said general mortgage.

2. Subject to the lien of the said general mortgage, the shares of capital stocks of other companies and the bonds of other companies and of the company named in the following paragraphs marked respectively, *a, b, c, d, e, f, g, h, and i*, all of which shares and bonds are or are to be in accordance with the terms of said general mortgage deposited with the said trustee thereunder as part of the security for said general mortgage bonds and for the principal of said income bonds as aforesaid, to wit:

a. Shares of the capital stocks of other companies owned by the company, as follows, to wit (exclusive of shares retained to qualify directors):

| | |
|-------------------------------|---------------|
| A. & B. Railroad Company..... | 10,000 shares |
| C. & D. Railway Company..... | 5,000 " |
| E. & F. Railway Company..... | 500 " |

Said shares of the E. & F. Railway Company being subject to the guarantee fund mortgage of the company and deposited accordingly with the trustee under said mortgage.

b. Shares of the capital stocks of certain companies in which the company has the beneficial interest, but which are owned by railroad companies

whose capital stocks are wholly owned or controlled by the company, to wit (exclusive of shares retained to qualify directors):

| | |
|--|---------------|
| The G. & H. Railway Company (held by the J. & K. Railroad Company) | 10,000 shares |
| The L. & M. Railway Company (held by the N. & O. Railway Company) | 5,955 " |

c. Shares of the capital stocks of certain companies owned by the company, the control of which companies is held jointly by the company with other companies, to wit (exclusive of shares retained to qualify directors):

| | |
|---------------------------------------|---------------|
| O. & P. Railroad Company | 20,000 shares |
| The Q. & R. Railway Company | 2,250 " |

d. Shares of the capital stocks of certain companies in which the company has the beneficial interest, said shares being owned by companies owned or controlled by the company, which shares represent a joint ownership with other companies of the properties named, to wit (exclusive of shares retained to qualify directors):

| | |
|--|--------------|
| The S. & T. Railway Company (held by the J. & K. Railroad Company) | 3,000 shares |
| The U. & V. Railroad Company (held by N. & O. Railway Company). | 2,000 " |

e. Bonds of other railroad companies forming part of its system, and pledged to secure its 6 per cent. sinking fund secured bonds and its 5 per cent. collateral trust bonds, to wit:

Pledged to secure the 6 per cent. sinking fund secured bonds; all of the said sinking fund secured bonds being already deposited with the said trustee under said general mortgage, excepting one bond for one thousand dollars still outstanding:

| | |
|--|-----------|
| T. & R. Railroad Company first mortgage 6 per cent. bonds, par | \$200,000 |
| K. & E. Railroad Company first mortgage 6 per cent. bonds, par | 1,000,000 |

Pledged to secure the 5 per cent. collateral trust bonds, all of the said collateral trust bonds except the amount of \$1,000,000 being already deposited with the said trustee under said general mortgage.

| | |
|---|-------------|
| C. & D. Railway Company first-mortgage 6 per cent. bonds, par | \$5,000,000 |
| B. & S. Railway Company first mortgage 6 per cent. bonds, par | 200,000 |

f. Other bonds which are described in the following list, and are or were pledged as therein shown, to wit:

| | |
|--|-------------|
| P. & M. Railroad Company first mortgage 6 per cent. bonds, par | \$4,000,000 |
| G. & E. Railroad Company first mortgage 6 per cent. bonds, par | 500,000 |

pledged to secure the 4½ per cent. sinking fund bonds of the company, all of the said 4½ per cent. sinking fund bonds being already deposited with the said trustee under said general mortgage, except bonds for one thousand dollars each.

| | |
|---|-------------|
| M. & P. first mortgage 7 per cent. bonds, par | \$1,000,000 |
|---|-------------|

which were formerly pledged to secure the 5 per cent. mortgage bonds of the company, but are now held by the said trustee under said general mortgage, all of said 5 per cent. bonds and the indenture of trust securing the same having been canceled and discharged.

| | |
|---|-----------|
| N. & M. Railroad Company 6 per cent. bonds, par | \$600,000 |
|---|-----------|

which were formerly pledged to secure the sinking fund only, of the 5 per cent. mortgage bonds of the company, but are now held by the said trustee

under said general mortgage, all of said 5 per cent. bonds and the indenture of trust securing the same having been canceled and discharged.

And the following bonds formerly pledged to the trustees under the land grant mortgage of the company to secure moneys lent by the said trustees to the company, but which are now held by the said trustee under said general mortgage, the said land-grant mortgage and all the bonds secured thereby having been canceled and discharged, viz.:

A. & F. Company's guarantee fund notes, par..... \$1,000,000

g. All the bonds and notes of the company, now or hereafter acquired by said company under said reorganization plan, and now or hereafter held by the said trustee under said general mortgage, until said bonds or notes and the instruments of mortgage or pledge by which the same are secured shall have been duly canceled and discharged in accordance with the terms of said general mortgage, and of this indenture, and all bonds of other companies now or hereafter acquired by the company under said reorganization plan, and now or hereafter held by the said trustee under said general mortgage.

h. All of the said income bonds of the company acquired by said company by exchange of second mortgage bonds issued hereunder or otherwise.

i. Fifty thousand shares of the T. & F. Railroad Company, and million dollars of the first mortgage bonds of said company acquired under said reorganization plan, or the net proceeds of any sale of said shares and bonds, which sale the company is hereby authorized to make at its discretion — it being understood and agreed that the consent of all holders of bonds hereby secured, as well as of all holders of income bonds exchanging the same for bonds hereby secured, is hereby given to any such sale, and that the lien of these presents is to apply to the proceeds thereof in like manner as to said shares and bonds before such sale.

All of the said shares of capital stocks and all the said bonds, except the said income bonds, are the same shares and bonds which are mortgaged and conveyed to the said trustee by said general mortgage, and this mortgage is not intended to include, convey, or mortgage any shares of capital stocks or any bonds or any railroads, franchises, or property of the S. & S. Railway Company, of the N. & S. Railway Company, or of any of the subordinate companies forming parts of the system of said S. & S. Railway Company, nor any shares of capital stocks, nor any bonds, railroads, franchises, or property of any other company not included in said general mortgage.

To HAVE AND TO HOLD all and singular the premises and property hereby granted, bargained, and sold, conveyed, transferred, and assigned, and every part and parcel thereof, with all the appurtenances in anywise thereto belonging or appertaining, to the said trustee, its successors in said trust and its or their assigns, to its and their own use and behoof forever; subject to the said general mortgage and said other prior mortgages, liens, and pledges hereinbefore named.

IN TRUST, NEVERTHELESS, to and for the uses and purposes and upon the trusts hereinafter set forth:

First. The said second mortgage bonds shall be executed, certified, and issued for the following purposes:

I. Said bonds designated as class A, are hereby limited to the amount of million dollars, and shall be used for the purpose and only for the

purpose of exchanging the same at par for the said income bonds of the company in accordance with the terms of said Circular No. One.

II. Said bonds designated as class B, are hereby limited to the amount of million dollars, and shall not be issued in any one year to a greater amount than million dollars of said bonds. Said class B bonds shall be certified by the trustee hereunder upon the presentation of a duly authenticated copy of a vote of the board of directors of the company authorizing such issue, and requesting such certification, and stating that the proceeds of the bonds thus issued shall be expended on specific improvements therein named (including equipment and the retirement of outstanding equipment trust bonds), upon the mileage of the system of the company, as it existed at the date of this mortgage, viz., on July 1, exclusive of the mileage of the S. & S. railway system, and of the roads of the M. & S. Railway Company. If said improvements in any one year shall not require an expenditure equal to the proceeds of said million dollars of said bonds, the surplus proceeds of said amount of said bonds shall be applied in the next year to such improvements for that year, but no greater amount shall be expended in any one year than the proceeds of million dollars of said bonds, and no such surplus shall be applied to expenditures for extensions beyond the mileage to which said proceeds are limited as aforesaid, as provided by the terms of said Circular No. One.

The mileage for improvements upon which the proceeds of said class B bonds may be expended in accordance with the foregoing provisions, is as follows: [*Here recite same.*]

III. If, after all the bonds designated as class B shall have been issued and their proceeds applied as aforesaid, it shall in the judgment of the directors of the company be expedient, a further issue or issues of said second mortgage bonds may from time to time be made to an amount not exceeding million dollars of said bonds in any one year, in the same manner and for improvements upon the same mileage as is above prescribed in case of the issues of said class B bonds, the only difference being that the amount in each year shall be limited to million dollars instead of to million dollars of said bonds; PROVIDED, that the aggregate further issues of said second mortgage bonds in addition to classes A and B shall not exceed a total limit of million dollars, in accordance with the terms of said Circular No. One.

Whenever the word "year" is used in this indenture in provisions relating to the limitation of issues of said second mortgage bonds, said word shall be held to mean the financial year of the company.

Second. The shares of other companies hereby conveyed, and any additional shares of the same companies hereafter acquired by the company shall, subject to said prior mortgage and liens, be transferred to and deposited with the said trustee to be used only in case of default and to be held subject to the terms of this indenture.

Until default and the continuation thereof, as hereinafter provided, the trustee shall, from time to time, as often as the company shall, in writing, so request, execute and deliver to the president for the time being of the company, or to such other person or persons as may be named in any such written request, a proxy or proxies to vote upon any or all such

shares of stock at any annual, special, or other meetings of the stockholders respectively of the several companies whose shares of stock are deposited with and held by the trustee.

The shares of the E. & F. Railway Company and of the S. & R. Railroad Company, now covered by the guarantee fund mortgage of the company and deposited accordingly with the trustee under said mortgage, shall, subject to said general mortgage, be thus deposited with the trustee hereunder to hold as aforesaid as soon as all of the guarantee fund notes secured by said guarantee fund mortgage shall be paid, or in case of the sale of the shares of the said S. & R. Railroad Company, as aforesaid, the net proceeds of such sale shall be thus deposited instead of said shares.

In the event of any consolidation of companies, the shares of which are held on the trusts of this indenture, the trustee shall, upon the request in writing of the company, consent to such consolidation or consolidations, and shall exchange said shares for such shares of the consolidated company — to be held on the like trusts — as the shares originally held by the trustee may entitle it to receive under the agreement of consolidation.

In case the charters of any of said companies, whose shares shall be held under this indenture, expire by their terms during the existence of the trust hereby created, the company shall, on or before such expiration, take all proper steps to have said charters extended.

Unsecured bonds or notes of the company acquired under the provisions of said reorganization plan, by exchange, purchase, or otherwise, shall be at once canceled. Secured bonds or notes of the company heretofore issued and so acquired shall be held by the trustee, as security under this indenture, until all the bonds or notes secured by the same instrument of mortgage or pledge shall be acquired when they shall be canceled and such instrument discharged of record: PROVIDED, that no such cancellation and discharge shall be made until after the board of directors of the company shall have considered the matter, and after taking the advice of counsel learned in the law shall conclude that all the security of the bonds so to be canceled will, upon such cancellation and discharge, be preserved to and vested in the holders of the bonds secured hereby, subject to the lien of said general mortgage.

The income bonds of the company acquired under the conversion plan set forth in said Circular No. One, shall not be canceled but shall be held as security hereunder as hereinafter more fully provided.

Bonds of other railroad companies acquired before maturity under the provisions of said reorganization plan shall not be canceled, but shall be held and dealt with by the said trustee, as security under this indenture, subject to said general mortgage.

When any bonds of other railroad companies hereby mortgaged shall mature during the existence of the trust hereby created, the said trustee shall be entitled to receive all bonds issued in renewal or extension of the said bonds so mortgaged and maturing, and shall, upon the request in writing of the company, consent to such renewal or extension, and surrender the maturing bonds held by it in exchange for such new or extended bonds. If such bonds are not renewed, but are paid at maturity or prior thereto, the trustee shall, with the approval in the form of an official vote of the board

of directors of the company, apply the proceeds thereof to acquiring any of the bonds or obligations of the company, or of any other company, the payment of the principal or interest of which has been guaranteed or assumed in whole or in part by it, the acquisition of which will either free the property hereby mortgaged from a prior incumbrance or preserve said mortgaged property unimpaired by substitution of an equivalent security.

Bonds of other railroad companies heretofore pledged or mortgaged to secure the company's funded indebtedness as aforesaid, shall, as soon as relieved from such pledge or mortgage, be forthwith transferred to and deposited with the trustee hereunder, to be held as security under this indenture.

When, under the provisions of said general mortgage, general mortgage bonds have been issued, to provide for the extension of the railroad or the laying of second or other additional main tracks upon the line of any railroad company, the shares of which or the beneficial interest in whose shares are or is mortgaged by said general mortgage, said railroad company may, as provided in said general mortgage, at the request of the company issue its bonds secured by mortgage or otherwise to an amount representing the cost of such extension or other additional main tracks, but in no event to exceed twenty thousand dollars per mile of such extension or of such other additional main tracks; which said bonds shall, subject to said general mortgage, be deposited with the trustee to be held as security under this indenture. Otherwise, except for the purpose of constructing such extensions and other additional main tracks and upon the request in writing of the company, no such railroad company shall add to its bonded indebtedness as existing at the date of this indenture.

Third. Said second mortgage bonds designated as class A, limited to million dollars as aforesaid, shall be certified by the trustee from time to time upon presentation and surrender of a like amount at par of the said income bonds. The income bonds thus surrendered shall not be canceled or discharged, but shall be held by the trustee hereunder as part of the security for all the bonds issued hereunder, so that the lien created by said general mortgage, to secure the principal of said income bonds subject to the priority of the general mortgage bonds, shall be preserved for the benefit of the holders of the bonds issued hereunder.

Said second mortgage bonds designated as class B, limited to million dollars as aforesaid, shall be certified by the trustee from time to time, but never to an amount exceeding million dollars of said bonds in any one year as hereinbefore provided, upon the presentation of a duly authenticated copy of a vote of the board of directors of the company authorizing such issue, and requesting such certification, and stating that the proceeds of the bonds thus issued shall be expended on specific improvements therein named (including equipment and the retirement of outstanding equipment trust bonds), upon the mileage of the system of the company as it existed on July 1, 1892, as hereinbefore described.

If, after all said bonds designated as class B shall have been issued and their proceeds applied as hereinbefore provided, it shall, in the judgment of the directors of the company, be expedient at any time or from time to time to make a further issue or issues of said second mortgage bonds as aforesaid,

the said trustee shall certify said bonds to an amount not exceeding million dollars of said bonds in any one year, upon the presentation of a duly authenticated vote of the directors of the company authorizing such issue, and requesting such certification, and containing statements as to the use of the proceeds of said bonds for improvements upon the said mileage of the system, including equipment as aforesaid, in the same manner as hereinbefore required in case of an issue of said class B bonds; PROVIDED, HOWEVER, that the aggregate further issues of said second mortgage bonds, in addition to classes A and B, shall not exceed a total limit of million dollars as hereinbefore provided.

The trustee shall in no case be responsible for the use made by the company of any of the bonds issued hereunder; but within eighteen months after any such request for certification as aforesaid the company shall make a full and specific report to the trustee, in writing, of the actual disposition of said bonds and the use of the proceeds thereof for improvements as aforesaid, which report shall be accessible at all times to the holder of any bonds issued hereunder.

For the purpose of carrying out the said conversion plan and to facilitate the exchange of bonds thereunder, the trustee may certify second mortgage class A bonds secured hereby in exchange for income bonds surrendered under the conversion plan to its agents, Messrs. B. B. & Co., London, upon receipt of advice from its said agents that they have received and hold said income bonds subject to the order of the trustee.

When, under the provisions of this indenture, it is necessary to ascertain or determine any question of fact, the certificate of the president or one of the vice-presidents, the chief engineer, and the general auditor of the company shall be accepted by the trustee and be binding upon the company and all other parties in interest, as conclusive of the fact or facts so certified.

In case any bond or bonds issued hereunder are mutilated, lost, or destroyed, it shall be lawful for the company, upon terms, conditions, and security to be prescribed by its board of directors, to issue a new bond or bonds of like tenor, amount, and date, and bearing the same serial numbers, and the officers of the company for the time being may sign, and the trustee may certify the same, for delivery in exchange for or in lieu of a bond or bonds so mutilated, lost, or destroyed.

Fourth. These premises are upon the express condition that upon the payment of the principal and interest of all of said second mortgage bonds according to their tenor, then, and in that case, all the estate, right, title, and interest of the said trustee, or its successors in the trust, shall cease, determine, and become void, and all the property and rights herein granted shall revert to and re-vest in the company, its successors and assigns, without any acknowledgment of satisfaction, re-conveyance, re-entry, or other act. Upon such payment the said trustee shall retransfer and deliver to the company all the shares of capital stocks and all the bonds of other companies and all other property which shall be then held under the trusts of this indenture.

Fifth. Until default shall be made in the payment of the principal or interest of said bonds as herein provided, or any of them, and such default shall continue for [six months] after demand in writing for such payment has been

made by the trustee, or until default shall be made in respect to something by these presents required to be done by the company, and shall continue for [six months] after demand in writing for performance, the company shall possess, manage, operate, and enjoy the said hereinbefore granted railroad and property, and every part thereof, with its equipments and appurtenances, and all the rolling stock of the company wherever situated, and shall take and use the tolls, income, rents, issues, and profits thereof, and shall vote upon and receive the dividends upon all shares of stock hereby conveyed, and shall receive the interest of all bonds at any time held by the said trustee under this indenture, in the same manner and with the same effect as if this indenture had not been made.

Sixth. The trustee shall have full power to, and until default as aforesaid, upon the written request of the company, shall join in the sale and conveyance of any real estate acquired for or belonging to the railroad of the company herein mortgaged, and not required for use in connection with said railroad by reason of change of its location or otherwise; provided, however, that the proceeds of any lands so sold and conveyed (or any lands acquired in substitution for any so sold and conveyed), shall be conveyed and transferred to the trustee to be held as security under this indenture.

Until default and continuation thereof as aforesaid, the company may sell, exchange, or otherwise dispose of such materials, rolling stock, and other movable property as have become old, worn out, disused, or undesirable, or are not needed for the purposes of the railroad, renewing the same or substituting therefor other property of equal or greater value, to be held as security under this indenture.

Until default and continuation thereof as aforesaid, the company may at any time during the existence of this trust, with the consent in writing of the holders of one-third in interest of the then outstanding bonds secured hereby, sell any of the shares or bonds of other companies conveyed to or deposited with the said trustee to be held as security under this indenture. In case of such sale, consented to as aforesaid, the said trustee shall, upon the request of the company, deliver, and join with the company in transferring, the shares or bonds so sold to the purchaser thereof, freed from the trusts of this indenture. All proceeds of any such sale of shares or bonds shall be paid to the said trustee, to be held and applied by it, with the approval of the board of directors of the company, to the purchase of any of the bonds or obligations of the company or of any other company, the payment of the principal or interest of which has been guaranteed or assumed in whole or in part by it, the acquisition of which will either free the property hereby mortgaged from a prior incumbrance or preserve said mortgaged property unimpaired by substitution of an equivalent security.

Seventh. In case the company shall fail to pay the principal, or any part thereof, or any installment of interest, or any part thereof, of any of the bonds secured or intended to be secured hereby, when and where the same shall become due and payable according to the tenor and effect of said bonds or of the coupons thereto annexed, and such default shall continue for [six months] after demand by the trustee in writing for such payment, or shall fail for said period of [six months] after demand in writing therefor to pay and discharge

all taxes, charges, rates, levies, and assessments, which have been or may hereafter be imposed, assessed, or levied upon the mortgaged premises, franchises, or property, or any part thereof, or shall fail after [six months'] notice from said trustee, to keep said property in reasonable repair and condition, then, and in any such case, the said trustee, and its successors in said trust, may, and upon the demand in writing of the holders of a majority in interest of the then outstanding second mortgage bonds, shall enter upon and take possession of all and singular the said mortgaged premises and property herein mentioned and described, and shall be entitled to vote upon and receive the dividends upon said shares of stock, and to receive the interest upon the said bonds held by it as security as aforesaid, and by itself, or its agents duly constituted, shall have, use, operate, and enjoy the said railroad, rolling stock, and property, and the appurtenances thereto belonging, making from time to time all repairs, alterations, and additions thereto by the said trustee deemed needful, and paying all taxes due upon the same, and paying also any amounts due for interest or principal of said general mortgage bonds, or of any of the bonds or notes secured by any of said prior mortgages or pledges then undischarged, and, after deducting the expenses of all such repairs, alterations, and additions, and such taxes and payments, and all sums necessary for its indemnification and reasonable compensation, shall apply the net income of the said premises and property to the payment of the interest, from time to time due and unpaid, upon the bonds secured or intended to be secured by this mortgage, and may retain and continue such possession and use until the whole of the interest of all said bonds shall be paid, or may procure the appointment of a receiver and the application of the net income as aforesaid. This power of entry may be exercised as often as occasion therefor shall arise, in the judgment of the trustee, pending this trust, and the trustee may continue to exercise the power herein granted for such period or periods as it may deem expedient, unless and until the holders of a majority in interest of the bonds secured hereby then outstanding shall otherwise in writing request.

Eighth. And in case of any default as aforesaid, and continuation thereof as aforesaid, the said trustee, and its successors in said trust, may, and upon demand in writing as aforesaid shall, cause all of the said premises and property regarded as one property and not otherwise, and including the said stocks and bonds deposited and held as aforesaid, to be sold at public auction, at the city of _____, in the state of _____, giving notice of the time, place, and terms of said sale by publishing the same in some principal newspaper in each of the cities of Boston, New York, _____, and London, England, at least once a week for [three] successive months, the last publication to be at least [thirty] days before the time appointed for said sale, with power to adjourn said sale from time to time at its discretion, and upon such sale to execute to the purchaser or purchasers thereat good and sufficient deeds of conveyance in fee simple of said railroad, rolling stock, and other property, and make transfers and deliveries of said stocks and bonds, which shall be a bar against the company, its successors and assigns, and all persons claiming under it or them, of all right, interest, or claim in or to the said premises and property, or any part thereof. In case of such sale, no purchaser other than the trustee shall be responsible for the application of the purchase money. Said sale shall be made subject to said general mortgage and said other prior mort-

gages, liens, and pledges hereinbefore named then undischarged, and the said trustee shall, after deducting from the proceeds of the said sale, the costs and expenses thereof and any costs and expenses it may have incurred in or about the execution of this trust, and enough to indemnify and save itself harmless from all liabilities arising from this trust, and its reasonable compensation, apply so much of the proceeds of said sale as may be necessary to the payment *pro rata* of the interest of said second mortgage bonds unpaid and of the principal thereof, whether then or thereafter payable, and shall pay the residue of said proceeds, if any there be, to the company, its successors or assigns.

At any such sale, the said trustee may, and at the request of the holders of a majority in interest of the said second mortgage bonds then outstanding shall, bid for and purchase the premises and property so sold, at a price not exceeding the whole amount due on said bonds then outstanding, with interest accrued thereon, together with the proper costs and charges of the said trustee and the expenses of the sale, which said bonds to the amount of their par value and accrued interest — on payment in money of said costs, charges, and expenses, and of any other expenses required to be paid in cash — shall be received in payment of the price bid either by said trustee or any other purchaser. In case of any such foreclosure sale and the purchase by the trustee of the premises and property so sold, the trustee, at the request of the holders of a majority in interest of said second mortgage bonds then outstanding, and as their agent, shall proceed to organize a new corporation under the laws of the state of _____, with all the rights, privileges, grants, franchises, and immunities now exercised and enjoyed by the company. For the purposes of such organization and in all measures and proceedings adopted to effect the same, the action of the majority of said second mortgage bondholders through their agent, the said trustee, shall be binding upon the minority, whose interest in the mortgaged premises and property, after such organization, shall be represented solely by the shares of stock in the new corporation or such other interests as may be apportioned to them under said organization, plan, and agreement. Such new corporation shall be organized upon such terms, conditions, and limitations, and with such allowance to any or all other parties interested in said mortgaged premises, and in such manner as the holders of a majority in interest of the then outstanding second mortgage bond shall in writing direct, and the trustee shall thereupon convey the premises and property so by it purchased to said new company or corporation so as aforesaid organized.

Ninth. In case of default in the payment of the interest of any of said second mortgage bonds, which default shall continue for [six months] as aforesaid, then the said trustee may, upon written notice to the company, declare the principal of all of said second mortgage bonds to be due and payable, and upon the request in writing of a majority in interest of the holders of the then outstanding second mortgage bonds, the trustee shall declare the said principal sum to be at once due and payable, and it shall be so held and deemed for the purposes of foreclosure and sale by either of the methods herein provided, and for all other purposes whatsoever.

Tenth. In case of any default in the payment of the interest or principal of said bonds, and continuation thereof for [six months] as aforesaid, the holders of a majority in interest of the said second mortgage bonds then outstanding,

by an instrument in writing signed by them, and on their furnishing to the trustee reasonable means and indemnity for the payment of services, expenses, and liabilities to be incurred and performed in so doing, may require the said trustee to enforce either of the remedies by foreclosure or sale above provided in case of such default, or to waive any default. In case the trustee shall enter and take possession of the mortgaged property under any of the provisions of this indenture, and shall use and operate the same by means of a receiver or otherwise, and thereafter, before the principal of the said bonds shall have become due, the default under which such entry was made shall have been cured, and no interest shall remain due on any of the said bonds, and all other payments shall have been made, and all other acts done which are required to be made and done by the company under any of the provisions of this indenture, the trustee shall restore, re-convey and re-deliver to the company all the mortgaged property to be held in the same manner as if no such default had been made.

Eleventh. In case of any default continuing as aforesaid, a foreclosure by entry and taking possession as hereinbefore provided shall not be held to waive the remedy by sale as also hereinbefore provided, but said power of sale may be exercised by said trustee, and its successors in said trust, at any time while such possession under such entry continues, upon the request in writing signed by the holders of a majority in interest of said second mortgage bonds then outstanding, and upon compliance with the terms above provided in regard to the manner, place, and notice of such sale.

The trustee may in case of default as aforesaid apply to any court of competent jurisdiction for instruction as to matters not herein expressly provided for. It is hereby expressly declared and agreed that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, and shall not deprive the said trustee, or the beneficiaries acting through such trustee, of any legal or equitable remedy appropriate to enforce the provisions of this instrument; PROVIDED, that all such proceedings shall be taken by the mortgagee or trustee, its successor or successors in trust, and not by bondholders, either individually or collectively.

Twelfth. [*Here insert articles fourth, twenty-first, and other proper provisions from Form No. 1320.*]

Thirteenth. In case default shall be made in the payment of the principal or interest of any of the bonds held by the trustee as security under this indenture, the trustee may, in its discretion, and for the benefit of the trust hereby created, enforce or procure the enforcement of any of the remedies given to bondholders in case of such default by the instrument by which such bonds are secured, and if said bonds so in default are secured by mortgage or pledge, the trustee may, and, upon the request in writing expressed in the form of an official vote of the board of directors of the company, shall purchase said mortgaged or pledged property at any foreclosure or other sale, which property so purchased shall be held as security under this indenture.

In case of any default under the terms of this indenture the company may by a vote of its directors waive the provisions in this indenture contained in regard to continuation of default for [six months] before enforcement of the remedies herein provided.

Fourteenth. The company, for itself and its successors and assigns doth hereby covenant and agree with the said trustee, and its successors in the trust and assigns, to pay the principal and interest of all of said second mortgage bonds according to the terms thereof and of this indenture, and all taxes, charges, rates, levies, and assessments upon the mortgaged premises and property, to keep the mortgaged property in reasonable repair and condition, and to execute and deliver any further reasonable or necessary conveyances and transfers of said premises, franchises, and property, or any part thereof, whether now owned or hereafter to be acquired, to the said trustee, its successors in said trust and assigns, which may be required for the more fully assuring and conveying said premises and property, and carrying into effect the objects and purposes of these presents, and to do at its own expense all things necessary and proper to be done, in order to make and keep valid and intact this trust and mortgage upon the aforesaid premises and property; and doth further covenant and agree that no additional bonds of any of its previous bond issues shall be issued by it during the existence of this trust, excepting such issues of its general mortgage bonds as are provided for by the terms of its said general mortgage.

For further assuring to the said trustee the property and rights meant to be vested in it by this indenture, the company hereby constitutes said trustee its attorney irrevocable to ask and receive payment, conveyance, and delivery of all and every part of the mortgaged property, real and personal, intended at any time to be transferred to and vested in it under the operation of this indenture, and for such purpose authorizes the said trustee to use the name of the said company, to give effectual releases and discharges, and to employ such attorneys or agents in relation to the premises as said trustee shall think fit.

Fifteenth. It is expressly agreed that during the continuance of this trust when any occasion arises therefor, except as to matters the determination of which has been by the terms of this instrument left to the discretion of the trustee, the holders of a majority in interest of the second mortgage bonds outstanding may from time to time instruct the trustee by requisition in writing as to what course the trustee shall take in enforcing or protecting their rights hereunder, and upon such written requisition accompanied, if said trustee so elects, with the deposit in the hands of the trustee of the major part of all the outstanding bonds, in indemnification and support of said trustee's action, then it shall be the duty of the trustee for the time being to enforce the rights of such bondholders in the manner and to the extent prescribed in such requisition and not otherwise, unless such prescribed action shall be modified and recalled or changed by subsequent similar requisition or requisitions from time to time made; provided, however, that said action therein prescribed conforms to the provisions of this indenture, and does not impair any rights vested under this indenture in the holders of such minor part of said bonds as do not join in signing such requisition or requisitions; it being the intent of this provision to secure to the holders of the majority in interest respectively of all outstanding second mortgage bonds secured under and by this indenture the same control in prescribing the action of the trustee in any condition of affairs which may arise during the continu-

ance of this trust as the holders of a majority of the company's stock possessed in the management of said company before such default.

[Here insert articles twenty-seventh to thirty-first, both inclusive, from Form No. 1320.]

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be affixed to these presents, as also to nine counterparts hereof, and the same to be signed by their respective vice-presidents, and attested by their respective assistant secretary and secretary on the day and year first above written.

Railroad Company.

By

Vice-President

[SEAL.]

Attest:

Assistant Secretary.

Trust Company of New York, Trustee.

[SEAL.]

Attest:

By

Vice-President.

Secretary.

1322. First Preference Income Mortgage.¹

THIS INDENTURE, made the day of , A. D. , between the Railroad Company, hereinafter called the railroad company, and the Coal Company, hereinafter called the coal company, parties of the first part, and the Trust Company, of the city of , hereinafter called the trustee, party of the second part:

WHEREAS, at the annual meeting of the stockholders of the railroad company, duly convened on the day of , , whereat hundred thousand shares of the capital stock of the said railroad company were represented, the following resolutions were unanimously adopted:—

“Resolved, That an issue of first preference income mortgage bonds of the

Railroad Company, is hereby authorized to an amount not exceeding \$25,000,000, payable January 1, 19 , bearing non-cumulative interest from June 1, 18 , at 5 per cent. per annum, payable only out of earnings available for the purpose after providing for interest on the general mortgage bonds and all other fixed charges, and that a mortgage, dated January 1, , in such form as may be approved by the board of managers, be executed, securing the same, upon the railroads, leased lines, rolling stock, ships, boats, real estate, and franchises of the company, now or hereafter acquired, and the coal lands and other real estate, plant, and leasehold estates, now or hereafter acquired, of the Coal Company, said mortgage to be subordinate in lien to the mortgage given to secure the general mortgage bonds.

“Resolved, That the offices of first register and assistant secretary of the

Railroad Company be and the same are hereby created, and the board of managers be and they are hereby authorized to elect and appoint said officers.

“Resolved, That the said first register is hereby authorized and directed, by and on behalf of the Railroad Company, to sign and execute the first preference income mortgage bonds, and the corporate seal of the Railroad Company (attested by the signature of the assistant secretary of the said railroad company), shall be and is hereby authorized to be affixed by the assistant secretary to the said first preference income mortgage bonds.”

AND, WHEREAS, at a meeting of the board of directors of the railroad com-

¹This mortgage contains also many of the features of a collateral trust and equipment mortgage.

pany, held on the day of , 18 , the foregoing resolutions having been submitted and read, the following preamble and resolutions were adopted:—

“ WHEREAS, it is advisable that provision should be made for retiring the obligations of the company, and for other purposes calculated to promote its interests by a further issue of its bonds, secured by mortgage of its railroads, canals, real and personal estate, and corporate rights and franchises; therefore be it

“ *Resolved*, Under the power conferred by the act of the legislature of the state of , approved the day of , A. D. , entitled ‘An act ,’ etc., and every other power or authority exercisable in the premises;

“ I. That an issue of bonds of this company to be known as the first preference income mortgage bonds is hereby authorized to the amount of twenty-five million dollars, payable on the first day of January, one thousand nine hundred and , with interest thereon meanwhile payable on the first day of February of each year only out of the net earnings of the railroad company for its fiscal year, ending on the thirtieth day of the preceding November, available for the purpose, up to five per centum per annum, after providing for the interest on the bonds issued from time to time under the general mortgage of the Railroad Company and the Coal Company, dated , , and all other fixed charges, the said net earnings to be ascertained in the manner set forth, and the said fixed charges being those stated and defined in the mortgage given to secure said bonds. The first payment of interest, including that earned from June 1 to December 1, , will be due on the 1st day of February, . If such net earnings of the railroad company available for the interest on said bonds shall not be sufficient to pay said interest in full, so much of said interest as shall remain unearned shall not accumulate.

“ II. That the said bonds shall be for one thousand dollars each, and they shall be substantially in the form following:

(FORM OF BOND.)

“ UNITED STATES OF AMERICA, STATE OF .
“ THE RAILROAD COMPANY.

“ \$1,000.

No. .

“ *First Preference Income Mortgage Bond.*

“ Total issue, \$25,000,000.

“ The Railroad Company hereby acknowledges itself indebted in the sum of one thousand dollars in gold coin of the United States of America, of the present standard weight and fineness, which sum the said company promises to pay to the bearer hereof, or [when registered as hereinafter provided], to the registered owner, at its office in the city of , on the first day of January, one thousand nine hundred and , with interest thereon meanwhile payable in like gold coin, on the delivery of the proper coupon therefor, on the first day of February of each year, only out of the net earnings of the railroad company for its fiscal year, ending on the thirtieth day of the preceding November, available for the purpose, up to five per centum per annum, after providing for the interest on the bonds issued from time to time under the general mortgage of The Railroad Company and The Coal Company, dated , 18 , and all other fixed charges; the said net earnings to

be ascertained in the manner set forth, and the said fixed charges being those stated and defined in the mortgage given to secure this bond. The first payment of interest, including that earned from June 1, to December 1, , will be due on the 1st day of February, . If such net earnings of the railroad company available for the interest hereon shall not be sufficient to pay said interest in full, so much of said interest as shall remain unearned shall not accumulate. The said principal, and interest thereon, when earned as aforesaid, will be paid without deduction from either principal or interest for any tax or taxes which may be payable under any present or future laws of the United States of America, or any state thereof, for national, state, or municipal purposes, the railroad company hereby agreeing to pay any such tax or taxes which it may now or hereafter be required by any such law to retain therefrom.

"This bond may be registered on the books of the said railroad company, either in , or at the agency of the company in either of the cities of New York or London, and if so registered it will thereafter be transferable only upon the books of the said company, (wherever registered), by the owner in person, or by attorney duly authorized, according to the rules established for that purpose, unless the last preceding transfer shall have been to bearer, and transferability by delivery thereby restored, and it shall continue to be susceptible of successive registrations and transfers to bearer at the option of the holder, but such registration shall not affect the negotiability of the coupons attached hereto.

"This bond is one of an issue of bonds, amounting in the aggregate to twenty-five million dollars, secured by a mortgage bearing even date herewith, called the first preference income mortgage, duly authorized, executed, and delivered by the said railroad company and by the Coal Company to The Trust Company, of the city of , in trust, to secure the payment of the principal of the said bonds when due, and the interest thereon when earned, and is subject to the provisions of the said mortgage-as therein set forth, which said mortgage is subordinate in lien to a certain other mortgage of the said railroad company and the Coal Company, dated the day of , , and called the general mortgage, given to secure an issue of bonds of \$100,000,000, to which mortgage reference is made for the terms and conditions of the same. This bond will not become obligatory until the certificate indorsed hereon shall have been signed by the trustee.

"IN WITNESS WHEREOF, the Railroad Company has caused its corporate seal to be hereunto affixed and attested by its assistant secretary, and this bond to be signed by its first register, this third day of January, one thousand nine hundred and .

[SEAL.]

"Attest:

Assistant Secretary."

(FORM OF COUPON.)

"On the 1st day of February, A. D. , the Railroad Company will pay to the bearer, upon surrender of this and all prior coupons, such portion of its net earnings, up to fifty dollars, as shall, in accordance with the mortgage securing the same, be then applicable to the payment of interest on its first preference income mortgage bond No. .

Secretary.

"The Railroad Company,
By
First Register.

(FORM OF TRUSTEE'S CERTIFICATE.)

" This bond is one of the issue of bonds described in the within mentioned mortgage or deed of trust, called the first preference income mortgage, dated , , executed by the Railroad Company, and the Coal Company, to the undersigned.

The Trust Company, of the City of , Trustee,
 By
 President.

" III. That bonds amounting in the aggregate to twenty-five million dollars shall be, and they are hereby authorized to be issued for the following purposes:

- (A) To be delivered to the stockholders, bondholders, and creditors of the Railroad Company and the Coal Company, or their respective assigns, in payment of the moneys contributed by them respectively for the financial relief of the said companies..... \$12,000,000
 - (B) To be delivered to the holders of the mortgage bonds of the Railroad Company, secured by the mortgage of said company dated July 1, (in case the bonds secured by said mortgage shall not be paid off or purchased by the railroad company before the 1st day of July,), as compensation for reduction of the rate of interest on said mortgage bonds and the accrued interest thereon 13,000,000
- \$25,000,000

" IV. That none of the bonds thus set apart and appropriated shall be used for any other purpose: PROVIDED, HOWEVER, that if the said bonds or any portion thereof referred to in paragraph "B," as aforesaid, shall not be required to be used for the purposes therein specified, the railroad company shall have the right to use the said bonds, or such portion thereof as shall not be so required, for any other purpose.

" V. That each bond, the execution of which is hereby authorized, shall be authenticated by the certificate thereon of the Trust Company of the city of , trustee, or its successors in the trust, in the form hereinbefore set forth, and without such certificate no bond shall become obligatory nor be entitled to the benefit or security of the said mortgage.

" VI. That a mortgage dated , , shall be made to the Trust Company, of the city of , as trustee, securing all the said bonds, without distinction or priority of one over another, whether the same be issued contemporaneously with or subsequently to the date of the said mortgage, all of which bonds shall be taken to have been issued at the date of the said mortgage;" and,

WHEREAS, it was then further Resolved, that the said mortgage should be made in the form of this present indenture, which was then approved and adopted; and that the first register of the said railroad company should be authorized to sign the said bonds for one thousand dollars each, in the form prescribed, to the aggregate amount of twenty-five million dollars; and that the assistant secretary should be authorized to affix the corporate seal to the said bonds and to attest the execution thereof, and that the president, or,

in his absence, the vice-president, should be authorized for and on behalf of the said railroad company, and as its act and deed, to affix its corporate seal to the said indenture of mortgage, and to acknowledge and deliver the same as its act and deed, and that the secretary be authorized to attest the execution of the same, and to cause the said indenture to be duly recorded.

All of which, by reference to the minutes of the said meeting, will more fully appear; and,

WHEREAS, at a meeting of the board of directors of the said coal company, held on the day of , , a copy of the foregoing preamble and resolutions of the managers of the said railroad company was laid before the said board, and thereupon it was resolved that the president, or, in his absence, the president *pro tem.*, be authorized to affix the corporate seal of the said coal company to the indenture of mortgage referred to in the said resolutions, and to acknowledge and deliver the said indenture as the act and deed of said coal company, and that the secretary be authorized to attest the execution of the said indenture and to cause the same to be duly recorded; and,

WHEREAS, at a meeting of the stockholders of the said coal company, duly convened, upon the 1st day of , , whereat the entire number of the shares of the capital stock of the said coal company was represented, the preamble and resolutions adopted by the board of managers of the said railroad company as aforesaid, and the foregoing resolution passed by the board of directors of the said coal company, were laid before the meeting, and thereupon, by an unanimous vote representing the entire capital stock of the said coal company, the said resolution of the board of directors of the said coal company was approved, ratified, and confirmed.

All of which, by reference to the minutes of the said meeting, will more fully appear.

NOW THIS INDENTURE WITNESSETH: That the railroad company, for the better securing the payment of the principal of the aforesaid bonds and the interest thereof, when earned, and in consideration of the sum of one dollar, lawful money of the United States of America, to it paid by the trustee, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed, confirmed, assigned, transferred, and set over, and by these presents, in pursuance of every power and authority it in this respect enabling, doth grant, bargain, sell, alien, enfeoff, release, convey, confirm, assign, transfer, and set over unto the trustee and its successors all the railroads of the railroad company, viz.: [*Here insert full description.*]

TOGETHER with all the real estate of the railroad company wherever the same may be situated; and all real estate which may be hereafter acquired by the said railroad company; and together with all other railroads which may be hereafter constructed or acquired by purchase, merger, or in any manner whatever by the said railroad company; and together with all other leasehold estates in any other railroads which may be hereafter acquired by lease, assignment, or in any manner whatsoever by the said railroad company; and together with all branches, extensions, sidings, and turnouts of all the said railroads, and each of them, now belonging to, or which may hereafter be constructed or acquired by the railroad company; and all lands,

rights of way, rails, bridges, wharves, fences, workshops, machinery, stations, offices, depots, depot grounds, engine-houses, buildings, improvements, tenements, and hereditaments now owned or which may hereafter be acquired by the railroad company, together with all locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars, and all other engines, cars, carriages, and rolling stock, tools, implements, and materials now belonging, or which may hereafter belong, to the railroad company, all the steam colliers, vessels, canal boats, and barges of the railroad company, including, specifically, the following named steam colliers and steam tugs, enrolled in the office of the collector of customs of the port of _____; the steamship _____, of the burden of four hundred and thirty-six and eighty-eight one-hundredths tons, enrolled June _____, _____; the steamship _____, of the burden of six hundred and ninety-nine and ten one-hundredths tons, enrolled June _____, _____, etc.; and all ships, vessels, barges, and boats now or hereafter belonging to the railroad company; together with all and singular the tolls, rents, revenues, issues, profits, and income of the said railroad company, derived from said railroads, canals, and other property, and all the corporate and other rights, privileges, appurtenances, and franchises of the railroad company, acquired or to be acquired, connected with, or relating to the mortgaged premises; and together with all the streets, ways, alleys, passages, waters, water-courses, easements, rights, liberties, privileges, hereditaments, and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates belonging and appertaining, or to belong and appertain; and the reversions and remainders, rents, issues, profits, and income thereof; and all the estate, right, title, interest, property, claim, and demand, of every nature and kind whatsoever, of the railroad company, as well at law as in equity, of, in, and to the same and every part and parcel thereof.

AND AS FURTHER SECURITY FOR THE PAYMENT OF the principal of the bonds hereby secured, and the interest when earned as aforesaid, the railroad company does hereby assign and pledge, as collateral security, to the said trustee and its successors, one hundred and sixty thousand shares of the capital stock of the _____ Coal Company, now belonging to the said railroad company, of the par value of fifty dollars each, amounting in the aggregate, at par, to eight millions of dollars \$8,000,000 00

AND THIS INDENTURE FURTHER WITNESSETH: That the _____ Coal Company, for the better securing the payment of the principal of the aforesaid bonds, and the interest thereof, when earned as aforesaid, and in consideration of the sum of one dollar lawful money of the United States of America, to it paid by the trustee, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed, confirmed, assigned, transferred, and set over, and by these presents, in pursuance of every power and authority it in this respect enabling, doth grant, bargain, sell, alien, enfeoff, release, convey, confirm, assign, transfer, and set over unto the trustee and its successors all its coal lands, coal leases, iron ore lands, furnace properties, and other real estate, viz.: [*Here give a full designation and description of the same.*]

TOGETHER with all the other real estate of the coal company wherever the same may be situated, and all real estate which may be hereafter acquired by the said coal company, together with all railroads and all branches, extensions, sidings, and turnouts of any railroads now belonging to or which may hereafter be constructed or acquired by the said coal company, and all lands, coal leases, iron ore leases, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements, and hereditaments now owned, or which may hereafter be owned or acquired by the coal company, together with all the locomotives, tenders, coal cars, carriages, and all other engines, cars, and rolling stock, tools, implements, horses, mules, and materials now belonging, or which may hereafter belong, to the coal company, together with all and singular the tolls, rents, revenues, issues, profits, and income of the said coal company, and derived from said mortgaged property, and all the corporate and other rights, privileges, appurtenances, and franchises of the coal company, acquired or to be acquired, connected with or relating to the said lands, coal or iron mines, or other premises, or any of them, and together with all the streets, ways, alleys, passages, waters, water-courses, easements, rights, liberties, privileges, hereditaments, and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates belonging and appertaining, or to belong and appertain; and the reversions and remainders, rents, issues, profits, and income thereof; and all the estate, right, title, interest, property, claim, and demand of every nature and kind whatsoever, of the coal company, as well at law as in equity, of, in, and to the same and every part and parcel thereof.

AND AS FURTHER SECURITY FOR THE PAYMENT of the principal of the bonds hereby secured, and the interest thereof, when earned, the coal company does hereby assign and pledge, as collateral security, to the said trustee and its successors, subject to the prior pledge thereof by the coal company to the railroad company, under the mortgage dated July 1, , the following shares of the capital stock of the corporations hereinafter mentioned, viz.: [*Here describe them.*]

TO HAVE AND TO HOLD the premises hereby granted or intended so to be by the railroad company and the coal company respectively, with the appurtenances, unto the trustee and its successors, to and for its and their only use and behoof, but in trust, nevertheless, for the use, benefit, and security, as hereinafter mentioned, of the holders of the aforesaid bonds, amounting together to the sum of twenty-five million dollars, subject, however, to the right of the railroad company and coal company to retain the free and uncontrolled use, possession, management, and enjoyment of the premises by them respectively conveyed, or intended so to be, until the trustee or its successor or successors in the trust shall be authorized, as hereinafter mentioned, to enter upon and take possession of or sell the same as hereinafter set forth, except as herein otherwise provided. This mortgage is subject to the prior lien of a certain other mortgage of the Railroad Company and the Coal Company, called the general mortgage, dated the day of , to secure an issue of bonds amounting to one hundred million dollars.

AND IT IS HEREBY DECLARED, COVENANTED, AND AGREED, as follows, each party to this indenture covenanting and agreeing for itself, its successors and assigns, and as to matters and things to be done or permitted by itself, its suc-

cessors and assigns, alone: [*Here follow provisions similar to those of an ordinary trust mortgage, or a collateral trust mortgage, except as follows:*]

ARTICLE 3. The bonds hereby authorized, aggregating twenty-five million dollars, shall be appropriated and issued only for the purposes specifically set forth in the resolutions of the board of managers of the Railroad Company hereinbefore recited, and designated therein with the letters A and B, as follows:

| | |
|--|--------------------------------|
| (A) To be delivered to the stockholders, bondholders, and creditors of the Railroad Company, and the Coal Company (or their respective assigns), in payment of the moneys contributed by them respectively for the financial relief of the said companies | \$12,000,000 |
| (B) To be delivered to the holders of the bonds of the Railroad Company, secured by the mortgage of said company, dated July 1, 187 (in case the bonds secured by said mortgage shall not be paid off or purchased by the railroad company before the 1st day of July,), as compensation for reduction of the rate of interest on said general mortgage bonds, and the accrued interest thereon | 13,000,000 |
| | <hr/> \$25,000,000 <hr/> <hr/> |

And the railroad company hereby covenants and agrees that none of the said bonds shall be used for any other purposes than those set forth in said recited resolutions: PROVIDED, HOWEVER, that if the said bonds, or any portion thereof, referred to in paragraph "B," as aforesaid, shall not be required to be used for the purposes therein specified, the railroad company shall have the right to use the said bonds, or such portion thereof as shall not be so required, for any other purpose.

The trustee shall certify and deliver to the railroad company, from time to time, on its written request, all the bonds secured by this mortgage, to be by it applied as hereinbefore set forth.

All the bonds issued under this mortgage, whether the same be issued contemporaneously with or subsequently to the date of the said mortgage, shall have equality of lien without distinction or priority of one bond over another, which lien shall be of the date of the execution of this mortgage.

ARTICLE 4. The railroad company hereby covenants and agrees to apply the net earnings of the said railroad company, so far as the same may be available, after the payment of all fixed charges as hereinafter defined, to the payment of the interest up to five per cent. per annum upon the bonds hereby secured. If such net earnings of the railroad company available during each fiscal year for the payment of the interest on the bonds hereby secured shall not be sufficient to pay said interest in full, so much of the said interest as shall remain unearned shall not accumulate. It being expressly understood and agreed by and between the parties hereto, and by and among all the persons who shall be or become the owners of any of the said bonds, that the words "net earnings," shall be held to signify the sum remaining of the gross profits, earnings, incomes, and receipts of the property and business of the railroad company, from all sources during each fiscal year ending the 30th of November,

after deducting therefrom all the expenses of maintaining, operating, renewing, replacing, and repairing its said property and premises, including such reasonable improvements thereof and additions thereto as shall be necessary for the safe, proper, and economical operation of the same; and also after deducting all taxes or assessments imposed upon or against the said property and business, or the incomes and earnings thereof, and all unsecured or other indebtedness arising from the said maintenance, operation, renewal, and repair of the said premises; and that the words "fixed charges," in the bonds hereby secured, shall include all existing rentals and guarantees of the railroad company and all interest charges upon its present fixed, funded, and other indebtedness, including the interest on the bonds issued from time to time under the general mortgage of the Railroad Company and the Coal Company, dated . The said net earnings, as above defined or described, shall not be diminished (except the surplus hereof remaining in any year after the payment in full of the said five per centum per annum upon the bonds hereby secured), by reason of any expenditures by the railroad company for any purposes not above mentioned, nor shall the said fixed charges include any additional fixed or other charges created subsequently hereto.

The railroad company, on or before the 15th day of January, , shall ascertain the net earnings applicable to interest on the bonds hereby secured for the period from June 1, , to December 1, , up to 7½ per centum for said period, and shall thereafter on or before the 15th day of January of each year, ascertain the net earnings for the fiscal year ending the preceding 30th of November, applicable to the interest hereby secured, up to five per cent. per annum, and the railroad company shall on or before the 15th day of January of each year furnish the trustee with a statement showing the amount of the net earnings applicable to the interest on the bonds secured by this mortgage, and give public notice of the rate of interest payable on said bonds. If the said trustee shall not be satisfied with the said statement, or if it be notified by the holders of bonds to the amount of one-tenth of the amount outstanding, that they object to the same, it shall be its duty to so notify the said railroad company within the period of thirty days from the rendition of said statement. And the said trustee shall have the right to inspect the books of the said railroad company by its proper officer or by an expert accountant appointed for the purpose, who shall be paid for his services by the said railroad company.

If the said difference for any reason shall not be adjusted by agreement between the trustee and the railroad company, or if the trustee be called upon to proceed by the holders of one-tenth of the amount of bonds outstanding secured by this mortgage, who shall also have duly indemnified the trustee against all liability for costs and expenses, then and in that event it shall be lawful for and the duty of the said trustee to file a bill in equity against the railroad company in any court of equity in the state of , for an account of the net earnings under the provisions of this mortgage, and if the final decree of the court shall be that there are such net earnings available, under the terms of this mortgage, for the purpose of paying the interest on the bonds secured by this mortgage beyond the amount set forth in the statement furnished by the railroad company to the said trustee, and advertised for payment, then, unless the railroad company shall, within three

months after such final decree, pay the said balance of the net earnings so determined to be available and due as aforesaid, by way of interest to the said bondholders, such nonpayment shall constitute a default in the payment of interest, for which the trustee shall be authorized to proceed under the terms of the fifth article of this mortgage. The remedy herein provided for ascertaining the amount of the net earnings, in case of dispute, shall be exclusive of all others.

ARTICLE 5. If interest on said bonds shall be earned in any one year, and ascertained as provided in article fourth, and the railroad company, its successors or assigns, shall, at any time hereafter, after demand made in writing, omit, neglect, or refuse, for any period exceeding three months, to pay the said interest so earned on the bonds, intended to be hereby secured, or any of them, after the said interest shall have been earned and fallen due, according to the terms of the said bonds, or shall, after demand made in writing, omit, neglect, or refuse, for any period exceeding three months, to pay the principal of the aforesaid bonds, or any of them, after the said principal sum shall have fallen due according to the terms of the said bonds, then and in either such case, upon the written request of the holders of in amount of the bonds then outstanding, upon which default in the payment of interest or principal shall have been made, the trustee or its successor or successors in the trust for the time being may enter upon and take possession of the property and estate hereby granted or intended so to be, and operate, use, and manage the same to the best advantage, and appropriate the net income and proceeds derived therefrom (after deducting the expenses of this trust and such sum or sums as may be sufficient to indemnify the said trustee or trustees for the time being against any liability, loss, or damage for or on account of any matter or thing done by such trustee in good faith in the discharge of the trust), to the payment, first, of the interest on the general mortgage, dated , of the railroad company and coal company and on all prior mortgages when and as the interest thereon respectively becomes due, and second, without preference, priority, or distinction as to one bond over or as against another on account of the date of such bonds, or the times of their actual issue or otherwise, of the interest which shall have been earned and fallen due on the then outstanding bonds, hereinbefore mentioned and intended to be hereby secured; the said appropriation of income to be made *pro rata* in each case, until all of the said interest shall have been fully paid; and upon and after such entry by the said trustee, and during its possession of the hereby mortgaged property, it shall have, exercise, and enjoy the right to vote on all the shares of stock, and to perform any acts or to make or execute any requests, requisitions, or other instruments as holder of the shares of stock and bonds pledged or agreed to be pledged in this mortgage; or the said trustee for the time being shall, after or without entering upon or taking possession, as aforesaid, of the premises hereby granted or intended so to be, upon the written request of the holders of a like amount of the bonds then outstanding, upon which such default, as aforesaid, in the payment of interest or principal has been made, proceed to sell the property and estates hereby granted, or intended so to be, subject, however, to the lien of the said general mortgage of the railroad company and coal company, dated , and all prior mortgages, to the highest and best bidder or bidders, at public sale in the city of , first giving at least three

months' notice of such intended sale by publication, containing a brief general description of the property to be sold, to be made once a week in at least two daily newspapers of general circulation, published in the city of _____, in the state of _____, in the city of New York, in the state of New York, and in the city of London in the kingdom of Great Britain, respectively, and grant and convey the same to the purchaser or purchasers, freed from all and every the trusts hereby created, and without liability on the part of such purchaser or purchasers to see to the application of the purchase money, and shall and will appropriate the purchase money, after deductions made for the expenses of the trust and indemnity to the trustee as aforesaid, of the payment as aforesaid, without preference, priority, or distinction of one bond over or as against another, on account of the date of such bonds, or the times of their actual issue or otherwise, first, of the interest which shall have been earned and fallen due on, and secondly, of the principal of the then outstanding bonds, hereinbefore mentioned and intended to be hereby secured, the said appropriation to be made *pro rata*, in each case, if the purchase money shall not be sufficient to pay in full the interest or principal of the said bonds as the case may be; and in the event of there being in the possession of the said trustee for the time being any portion of the trust estate, or the proceeds thereof, after the payment in full of the principal and interest of the aforesaid bonds, then the said trustee shall re-convey or re-transfer the said portion of the trust estate to the railroad company or coal company, by which it was granted or conveyed, and shall pay over the said portion of proceeds to the president for the time being of the railroad company, to be by him held in trust for such appropriation or payment thereof as may be by law required; it being distinctly understood and agreed, that in the event of any sale of the mortgaged premises, as hereinbefore mentioned, then and in such case the whole principal sum of each and all of the then outstanding bonds intended to be hereby secured, shall be deemed and taken to be forthwith due and payable: PROVIDED, HOWEVER, if before the said bonds shall have become due according to the terms thereof, and before the actual sale of the mortgaged premises, the railroad company or the coal company shall pay either to the bondholders or to the trustee for the time being on their behalf, all arrears of interest in default, and all expenses incurred by the trustee, or, if after entry, the trustee shall have received from the management and operation of said mortgaged premises sufficient to pay said interest and expenses, then the said trustee shall discontinue further proceedings for the sale of the mortgaged premises, and withdraw from any possession thereof that may have been taken, but such restoration and discontinuance of proceedings shall not in any case affect the right of the trustee to enter and proceed as herein provided for any subsequent default; and it being further distinctly understood, declared, and agreed, any law or usage, present or future, to the contrary notwithstanding, that the rights and remedies secured to the holders of the aforesaid bonds by this indenture, and the trusts therein declared, shall, as against the mortgaged premises and every part thereof, be exclusive of all others, and especially that no part of the mortgaged premises shall be levied upon, taken in execution, or sold under any judgment or decree obtained by the holder or holders of any of the said bonds against the railroad company for the payment of either principal or interest of the bonds intended to be hereby secured, unless such judgment or decree shall have been entered for the

purpose of enforcing the trusts or powers of entry or of entry and sale hereinbefore contained; it being intended, for the better securing the largest possible price for the mortgaged premises, in the event of a sale thereof, that the mode of sale hereinbefore provided shall be exclusive of all others.

ARTICLE 13. The shares of stock of the different companies hereby assigned to the trustee, by way of collateral security for the payment of the principal and interest, when earned, of the bonds herein authorized, as well as all shares of stock which shall be acquired by the said railroad company in carrying into effect hereafter the provisions of this mortgage for the conversion or retirement of the stock and obligations of its leased or controlled lines, which when so acquired are to be pledged to the said trustee as hereinbefore provided, except fifty shares of the stock of each of said companies, or so many thereof as may be required to be retained by the railroad company or the coal company, respectively, to qualify officers and directors in each of said companies, shall, as such shares of stock come under the control of the railroad company or coal company, respectively, from time to time, including shares of stock when released from prior pledges, be forthwith transferred to, and new certificates issued in the name of, the railroad company and the coal company, respectively, which certificate shall be stamped with the words, "This certificate is deposited with, and held by, the trustee pursuant and subject to the terms of the general mortgage and of the first preference income mortgage of the _____ Railroad Company and the _____ Coal Company, dated _____."

The railroad company and the coal company respectively shall duly execute a transfer indorsed on such certificates in the following form: "For the consideration set forth in the first preference income mortgage of the _____ Railroad Company, and the _____ Coal Company, dated _____, said _____ Company does hereby bargain, sell, assign, and transfer unto the trustee of said mortgage, for the time being, all the capital stock named in the within certificate, subject to a prior transfer to the trustee of the general mortgage of the railroad company and coal company, dated _____, and does hereby constitute and appoint the trustee its true and lawful attorney irrevocable, for and in its name and stead, to sell, assign, transfer, and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like power; PROVIDED, HOWEVER, that the powers hereby granted shall not be exercised by the trustee until after it shall have proceeded to enforce its rights, and those of the bondholders under said mortgage, by entry or foreclosure, according to the terms thereof."

The said certificates so transferred shall be delivered to and deposited with the trustee, but no certificate for the shares of stock represented thereby shall be issued to the trustee, until after it shall have proceeded to enforce its rights and those of the bondholders under this mortgage by entry or foreclosure, according to the terms hereof.

The stamping of such certificates shall be entered upon the transfer book and register of each of said companies issuing the same.

The railroad company and coal company, respectively, their successors and assigns, until such proceedings shall have been taken, shall have the right to sell or transfer the shares of stock hereinbefore excepted from assignment, to such persons as it shall deem fit, but in trust for and subject to this mortgage,

to enable the persons to whom such transfers shall be made to serve as officers and directors in the said companies, respectively, but such transfers shall be of no force and effect after such proceedings shall have been taken. The certificates of stock so sold or transferred shall be stamped as follows: "This certificate is held subject to the terms of the general mortgage and first preference income mortgage of the _____ Railroad Company, and the _____ Coal Company, dated _____, _____."

Until proceedings shall have been taken by the trustee to enforce the rights of the trustee and of the bondholders under this mortgage by entry or foreclosure, according to the terms hereof, the right to vote on said shares of stock shall remain with and be exercised by the railroad company and coal company, respectively, their successors and assigns, and all dividends on any of the said shares of stock shall belong and be paid to the railroad company and coal company, respectively. Simultaneously with the transfer to the trustee of the said shares of stock hereinbefore mentioned, the trustee shall make and deliver to the railroad company and coal company, respectively, powers of attorney or proxies authorizing and empowering the railroad company and coal company, respectively, their successors and assigns, to vote on all lawful occasions and for all lawful purposes on said shares of stock, respectively, and to collect all dividends and profits which shall accrue on said shares of stock, which said powers of attorney or proxies shall be irrevocable so long as no such proceedings shall have been taken, and shall be renewed by the trustee at any time and from time to time upon the request of the railroad company and coal company, respectively, unless such proceedings shall have been taken.

The assignment of the aforesaid shares of stock shall not prevent the consolidation and merger of any one or more of the companies, the stock of which is hereby pledged as collateral security, with any other or others of said companies, or with the _____ Railroad Company or the _____ Coal Company, but such consolidation and merger may be made under any existing or future laws, anything in this mortgage contained to the contrary notwithstanding.

ARTICLE 14. All the bonds and other securities hereby assigned, by way of collateral security, for the payment of the principal and interest of the bonds herein authorized, to the trustee, as well as all bonds and other securities which shall be acquired by the said railroad company or coal company, respectively, in carrying into effect the provisions of this mortgage for the conversion or retirement of the obligations of the said companies, or the stocks and obligations of the leased and controlled lines of said railroad company, which bonds and other securities, when so acquired, are to be pledged to the said trustee as hereinbefore provided, shall be deposited with the trustee, and be stamped with the words, "Deposited pursuant and subject to the terms of the general mortgage and first preference income mortgage of the _____ Railroad Company and the _____ Coal Company, dated _____, _____," and shall remain in its custody and possession; but so long as no proceedings shall have been taken by the trustee to enforce the rights of the trustee and of the bondholders under this mortgage by entry or foreclosure, according to the terms hereof, the trustee, as the holder of said bonds and other securities, shall have no right, against the written objection of the railroad company or coal company, respectively, to do or perform any act or to make or execute any request, requisition, or other instrument which by the terms of the mort-

gages securing such bonds as the owners thereof shall be entitled to perform, make, or execute, but all the rights of the owners of such bonds may, at the option of the railroad company and coal company, respectively, and upon their respective requests, remain with and be exercised by the railroad company and coal company, respectively, their successors and assigns, and the trustee shall at any time, and from time to time, on request of the railroad company and coal company, respectively, make and deliver to the railroad company and coal company, respectively, powers of attorney or proxies authorizing and empowering the railroad company and coal company, respectively, their successors and assigns, to do and perform any and all lawful acts, and to make or execute all lawful requests, requisitions, or other instruments, including authority to collect all the interest which shall accrue on said bonds and other securities, which the said railroad company and coal company, respectively, owners of said bonds and other securities, could do or perform, make or execute if the said bonds and other securities were registered in their name and were in their custody and possession.

Until proceedings shall have been taken by the trustee, to enforce the rights of the trustee and of the bondholders under this mortgage, by entry or foreclosure, according to the terms hereof, all interest which may be or become due and payable on the said bonds and other securities shall belong, and be paid, to the railroad company and coal company, respectively.

Any or all the bonds or other securities herein assigned by way of collateral security to the trustee, or which shall be acquired in pursuance of the provisions of this mortgage, shall, upon the request of the railroad company, be surrendered by the trustee, for extension, exchange, or payment, according to such request; and any or all of the mortgages given to secure said bonds or other securities may be satisfied, anything herein contained to the contrary notwithstanding; PROVIDED, HOWEVER, that any other bonds received in extension or exchange for said bonds or securities shall be delivered to the said trustee, and held by it upon the same trusts as those surrendered for such extension or exchange, and that all moneys received in payment for the said bonds or securities shall be applied in like manner as is prescribed in the fifteenth article of this mortgage, respecting the proceeds of any part of the mortgaged premises that may be sold.

ARTICLE 15. It shall be lawful for either the railroad company, its successors or assigns, or the coal company, its successors or assigns, to sell for cash, or on credit, or partly for cash and partly on credit, or to exchange any part or parts of the real or personal property hereby granted in mortgage by said companies, respectively (excepting the railroads and canals hereinbefore mentioned, and the stocks, bonds, and other securities herein pledged or agreed to be pledged), and to grant, convey, transfer, and assign the same to the purchaser or grantee free and discharged from the lien or operation of this indenture, and without liability on the part of such purchaser or grantee for the disposition made of the price paid, or of the property granted or transferred in exchange; PROVIDED, HOWEVER, that before any sale or exchange of any real estate shall be made, the written consent thereto of the trustee for the time being shall be obtained; the railroad company and the coal company hereby covenanting with the trustee that the proceeds of all such sales, or an amount of money equal thereto, shall be forthwith invested, either in im-

proving any remaining part of the mortgaged premises, or in the purchase of other property, real or personal, which property, as also any that may be acquired in exchange as aforesaid, shall become and be subject to this indenture of mortgage and all the trusts, including that of sale and exchange, herein declared, and shall be conveyed in mortgage to the said trustee for the time being, to be so held.

ARTICLE 16. It shall be lawful for the railroad company, anything herein contained to the contrary notwithstanding, to agree with the lessors or the assignees of the lessors of any lease or contract under which any railroad or canal is or may hereafter be held or operated by the railroad company, to any modification or change in the terms or conditions of such lease, or, with the written consent of the trustee for the time being, to surrender the said lease or any part of the demised property, whenever in the opinion of the railroad company such modification, change, or surrender would be advantageous to its interest; and, whenever authorized by any such lease or contract, it shall be lawful for the railroad company to sell or exchange, or, as lessees, to consent to the sale or exchange of any part of the demised property; and to convey, transfer, and assign the same without liability on the part of the purchaser or grantee for the disposition made of the price paid or the property transferred in exchange; the railroad company hereby declaring and covenanting that the proceeds of any sale of such demised property, which by the terms of the lease or contract shall be subject to its disposition, or a sum of money equivalent thereto, shall be forthwith invested by it in the improvement of any remaining part of the mortgaged premises, or in the purchase of other property, real or personal, which property, as also any that may be acquired in exchange for such demised property, shall become and be subject to this indenture of mortgage and all the trusts, including that of sale and exchange, herein declared, and shall be conveyed in mortgage to the said trustee for the time being, to be so held.

ARTICLE 17. If the railroad company and coal company, respectively, their successors or assigns, shall at any time during the continuance of these presents, desire to lease any part or parts of the mortgaged premises, it shall be lawful for the trustee, and it is hereby authorized to consent to such leases, and to join therein in such manner as to make this mortgage subject thereto, or to execute any agreements that may be necessary to that end.

ARTICLE 18. If the railroad company and coal company, respectively, their successors or assigns, shall, at any time during the continuance of these presents, desire to compromise, adjust, or settle any disputed title or claim to any part of the mortgaged premises, it shall be lawful for the trustee, and it is hereby authorized to release and discharge such part of the mortgaged premises from the lien of this mortgage.

ARTICLE 19. If the railroad company, its successors or assigns, shall, at any time during the continuance of these presents, desire to make any change in the location of any of its terminals or of the tracks, or of any of the station-houses, or other buildings or structures upon any part of the mortgaged premises, it shall be lawful for it so to do, and the trustee, upon conveyance to it, under the terms of this mortgage, of such new terminals, tracks, station-houses, buildings, or other structures, and the premises on which the same may be erected, is authorized, at the request of the railroad company, to release the former tracks, station-houses, buildings, and other structures and

the premises on which they were erected, from the lien of this mortgage, and execute and deliver any and all instruments necessary and proper to effect such purpose.

ARTICLE 20. If, within thirty days after notice in writing to be given by the railroad company and coal company, respectively, to the trustee, specifying the property intended to be exchanged, leased, sold, or otherwise disposed of under the last preceding five articles, or either of them, and the price or other consideration to be received therefor, the trustee shall serve upon the railroad company or coal company, respectively, objections thereto in writing, that such price or other consideration is not a fair and just equivalent for the property to be exchanged, leased, sold, or otherwise disposed of, then in case of the service of such written objections, and continued difference of opinion between the railroad company and coal company, respectively, and the trustee, as to the adequacy of such price or other consideration, or the propriety in the interest of the bondholders hereby secured of the exercise in such instance of the powers herein conferred, it shall be the duty of the parties between whom such difference of opinion shall exist, and they are hereby authorized and required, to appoint from time to time an arbitrator or arbitrators to determine the adequacy of such price or other consideration, and the propriety as aforesaid of the exercise in such instance of said powers, and in case such arbitrator or arbitrators shall determine that such price or other consideration is a fair and just equivalent for the property to be exchanged or sold, or otherwise disposed of, and that it is proper that such power should be exercised, the trustee, notwithstanding such written objections, shall execute and deliver such release. The railroad company and coal company shall, on the 1st day of January in each year, until the 1st day of January, 19 , furnish to the trustee statements showing in detail the properties sold or exchanged, leased, or otherwise disposed of under the provisions of this mortgage, the proceeds of such sales, the properties, if any, received in exchange, and the manner in which said proceeds may have been invested during the preceding year.

ARTICLE 21. Subject to any assignment, pledge, or transfer heretofore made by the railroad company of any right, title, or interest in, to, or under certain mortgages of the lands, tenements, and hereditaments of the Coal Company hereby granted and conveyed, which have heretofore been executed by the coal company, to secure any bond, obligation, or indebtedness of the coal company to the railroad company, and subject to the prior lien of the general mortgage of the railroad company and coal company, dated , , the said mortgages of the coal company shall be subordinate in lien, effect, and operation to this present indenture, and the railroad company doth hereby, to the full extent of its interest, present or reversionary, in such mortgages, waive and release its priority of lien upon the lands, tenements, and hereditaments therein described, in favor of this present indenture, and the railroad company hereby agrees forthwith, upon the payment and satisfaction of the mortgage or mortgages of the railroad company for which the said bonds and mortgages of the Coal Company may be held as security, to enter satisfaction upon such mortgages of the Coal Company.

ARTICLE 22. The railroad company and the coal company will from time to time perform, make, do, execute, acknowledge, and deliver all such further acts, deeds, conveyances, and assurances in the law, for the better assuring

unto the trustee and its successors, in the trust hereby created, the premises hereby granted, or intended so to be, as may at any time be reasonably required by the said trustee or its successors, and will execute and deliver to the said trustee and its successors, from time to time, supplemental mortgages, conveyances, and transfers, conveying, as they may be acquired, to the trustee, all the railroads, canals, and other property, shares of stock, bonds, and securities which shall be acquired under the provisions of this mortgage, to be held by it under the terms hereof, with like effect as if specifically described herein; and will execute and deliver, with these presents, and from time to time hereafter when occasion shall require, and when requested by the trustee, such bills of sale and transfers, and other documents, in due form of law, as may be necessary and proper under the laws of the United States, or of any state or territory thereof, to vest in the trustee all and every the steamers, boats, and barges, and other floating equipment hereby mortgaged or intended so to be, to the end that the title of the party of the second part may be duly registered according to the said laws or any of them.

ARTICLE 23. This trust is accepted upon the express condition that the said trustee shall not, nor shall any future trustee or trustees, incur any liability or responsibility whatever in consequence of permitting or suffering the railroad company or the coal company, their and each of their successors or assigns, to retain or be in possession of the premises by them severally hereby mortgaged, or agreed, or intended so to be, or any part thereof, and to use and enjoy the same; nor shall the said trustee, or any future trustee or trustees, be or become responsible or liable for any destruction, deterioration, loss, injury, or damage which may be done or occur to the premises hereby mortgaged, or agreed or intended so to be, either by said railroad company, or said coal company, or their agents or servants, or by any other person or persons whomsoever; nor shall any such trustee or trustees, present or future, be in any way responsible for the consequences of any breach, on the part of the railroad company or coal company, of any of the covenants herein contained, nor of any act of the railroad company or coal company, their agents or servants; nor shall the said trustee or trustees, present or future, be or become liable or responsible for any cause, matter, or thing, except its, his, or their own willful and intentional breaches of the trusts herein expressed and contained.

[Here insert articles twenty-seventh to thirty-first, both inclusive, and the witness clause, from Form No. 1320.]

1323. First Consolidated Mortgage Deed.

THIS INDENTURE, made this day of , in the year one thousand nine hundred and , between the Railway Company, a corporation created by, and existing under, the laws of the state of , hereinafter called the railway company, party of the first part, and the Trust Company of New York, a corporation created by and existing under the laws of the state of New York, hereinafter called the trustee, party of the second part:

WHEREAS, the railway company, party of the first part, a corporation existing under, and by virtue of, the laws of the state of , and particularly by an act of the legislature thereof, approved the day of , , and entitled "an act, etc.," has also become authorized to transact business

in the states of _____, by compliance with the laws of those states concerning foreign railroad corporations, and possesses divers lines of railway in the states of _____, together with franchises, rights, privileges, lands, tenements, and hereditaments thereunto belonging or appertaining, on which lines of railway or various portions thereof and the equipment thereof, bonds, secured by mortgages, and other liens are now outstanding as hereinafter mentioned; and,

WHEREAS, the railway company owns various stock and bonds, hereinafter more practically described and conveyed; and,

WHEREAS, the railway company, as lessee or otherwise, has possession of the certain lines of railway hereinafter more particularly described and set forth; and,

WHEREAS, bonds and "guaranteed stock" (so called), and equipment obligations are now outstanding secured by prior liens on various parts of the said railway properties, in the aggregate amount of _____ million dollars, exclusive of all bonds, "guaranteed stocks" and equipment liens owned by the railway company; and,

WHEREAS, all such railroads, properties, bonds, and stocks have been received by the railway company by, under, or in pursuance of the transfer to it, or for its benefit, of various other stocks, bonds, and other properties, of a nominal value, exceeding _____ million dollars, so transferred to or for its benefit by _____, upon the express promise and agreement of the railway company, among other things, to make, execute, issue, and use its bonds as herein provided, including a limited issue thereof from time to time to be made to the said _____, jointly and not severally, the survivors and survivor of them, and further issues thereof to be made for the redemption and acquisition of bonds and "guaranteed stocks," and equipment liens to the amount of _____ million dollars, and for new construction, all as herein provided; and,

WHEREAS, at a meeting of the holders of the preferred stock, and of the common stock, of the railway company, duly called, and held at _____ on the _____ day of _____, eighteen hundred and _____, resolutions were duly adopted, the holders of all the preferred stock and the holders of all the common stock of the railway company having voted in favor of such resolutions, which were in the words and figures following; that is to say:

Resolved, That the board of directors of the _____ Railway Company be, and it is hereby, directed, authorized, and empowered to cause to be executed and delivered, under the corporate seal of this company and the signatures of its president and secretary, a mortgage or deed of trust, to be known as the first consolidated mortgage deed, to the _____ Trust Company of New York, as trustee, upon all or any of the railroads, leasehold interests, equipment, franchises, contracts, and other property, real or personal, including stocks and bonds, and any interest or equity therein, of this company, to secure an issue of bonds not exceeding the aggregate sum of _____ millions of dollars, the principal thereof payable in gold coin of the United States of the present standard of weight and fineness, at the office or agency of this company in the city of New York on the first day of July, nineteen hundred and _____, with interest thereon at the rate of five per centum per annum, payable semi-annually in like gold coin, at the said office or agency on the first days of January and July in each year; both principal and interest of the said bonds to be paid without deduction for any tax or taxes which this

company may be lawfully required to pay or retain therefrom by any present or future laws, this company agreeing to pay any and all such tax or taxes; such bonds to be coupon bonds, giving the holders the right of registration of the principal thereof, and also the right to convert the same into full registered bonds.

Resolved, further, That, as and when so voted, from time to time, by the board of directors, the said million dollars of bonds may and shall be issued, certified, used, and delivered for the several following purposes, viz.: *

(A). million dollars of said bonds to be issued and certified presently for the purposes of this company, and when so certified, to be delivered to this company for its use.

(B). million dollars of said bonds not now to be issued, but, from time to time, hereafter to be issued, certified, and used in retiring and acquiring bonds to the amounts now outstanding secured by mortgages on various parts of the property of the railway company.

(C). million dollars of said bonds not now to be issued, but, from time to time, hereafter to be issued, certified, and used in acquiring the stocks of the Railroad Company and of the Railroad Company.

(D). million dollars of said bonds not now to be issued, but, from time to time, hereafter to be issued, certified, and used in retiring or acquiring equipment bonds, and equipment trust certificates, warrants, notes, or obligations which were outstanding liens upon certain equipment at the time of its acquisition by this company, and to reimburse this company for outlays heretofore and hereafter made by it for the retirement or acquisition of such equipment bonds and equipment trust certificates, warrants, notes, or obligations.

(E). million dollars of said bonds, from time to time thereafter to be issued, certified, and delivered, upon resolutions of the board of directors, and to be used only for the acquisition or construction of branch lines or extensions, or the acquisition of stocks or bonds thereof, or for the purchase of rolling stock, or for new construction or betterments, or for the purchase of additional property upon, along, or appurtenant to, lines of railway now or hereafter owned or controlled by this company; no greater amount than million dollars of said bonds to be issued, certified, or delivered in any one year; all such deliveries for such purposes to be made to the railway company, as from time to time shall be directed by said board:

Resolved, That the printed form of mortgage dated the day of , , now submitted to the meeting, be and the same is hereby approved as a sufficient compliance with the foregoing resolutions; and,

WHEREAS, the printed form of mortgage submitted to, and approved by, the stockholders at their said meeting was in the form of this indenture; and,

WHEREAS, the board of directors of the railway company, at a meeting thereof held at , on the day of , in the year nineteen hundred and , adopted a resolution in the following words, that is to say:

Resolved, That the president and secretary of the Railway Company be, and they are hereby, authorized and directed, in its behalf and under the corporate seal, in the form this day approved by the stockholders, and now submitted to and approved by this board, to execute and deliver a mortgage or deed of trust to be known as its first consolidated mortgage deed to the Trust Company of New York, as trustee, to secure the payment of the bonds of

try being noted on the bond by the company's transfer agent, after which no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored, but it may again, from time to time, be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely. This bond is also exchangeable for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon indorsed, of the trustee under said mortgage or deed of trust.

IN WITNESS WHEREOF, the Railway Company has caused these presents to be signed by its president or its assistant to the president or one of its vice-presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereunto, this day of , . . .

[SEAL.]

Railway Company.

Attest:

President.

Secretary.

FORM OF INTEREST COUPON,

Of which the first is to be payable January 1, . . .

On the first day of , Railway Company will pay the bearer at its agency in the city of New York, N. Y., twenty-five dollars in gold coin, free from all taxes, being six months' interest then due on its first consolidated mortgage gold bond, No. .

Treasurer.

The said coupons to be authenticated by the engraved signature of the treasurer of the railroad company who shall be in office at the time when any portion of said bonds shall be issued, it being intended that the railroad company may adopt and use for that purpose the engraved signature of any person who shall have been its treasurer at the time when any portion of said bonds may have been issued, notwithstanding the fact that such person may have ceased to be the treasurer of the railroad company; and,

WHEREAS, it is further *Resolved*, That there shall be indorsed on each of said coupon bonds and registered bonds a certificate of the trustee, which certificate shall be the conclusive and only evidence that such bonds are entitled to the security of the mortgage or deed or trust therein mentioned, and that no bond shall be valid or obligatory for any purpose until such certificate shall have been executed by the trustee, such certificate to be substantially of the following tenor, viz.:

TRUSTEE'S CERTIFICATE.

This bond is one of the series of bonds described in the within-mentioned mortgage or deed or trust, executed by Railway Company to the undersigned.

Trust Company of New York,

Trustee.

By

Vice-President.

AND, WHEREAS, at said meeting of the board of directors of the railway company, resolutions were adopted in the words and figures following, that is to say:

Resolved, That the bonds to be issued under the mortgage or deed of trust, to be known as first consolidated mortgage deed, to the Trust Company of New York, trustee, this day authorized shall be used and disposed of as follows: [*Repeat here from resolution of stockholders, commencing at the *, on page 1232.*] And,

WHEREAS, in pursuance of said resolutions, and of all and every legal power and authority in it vested, the railway company proposes to make and execute, and from time to time to issue and deliver bonds secured hereby;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That, in order to secure equally the payment of the principal and interest of all such bonds at any time outstanding and lawfully issued, whether at or after the date hereof, the railway company, party of the first part,

In consideration of the sum of one dollar to it duly paid by the trustee at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents with all the covenants and conditions thereof, and has granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed, confirmed, assigned, transferred, and set over, and by these presents does grant, bargain, sell, alien, remise, release, enfeoff, convey, confirm, assign, transfer, and set over, unto the trustee, party of the second part, its heirs, successors, and assigns forever:

All and singular, the following railroads, estates, leases, leasehold interests, properties, rights, franchises, and privileges of the railway company, that is to say:

The entire railroad now operated by the Railway Company, and extending as follows: [*Here describe it particularly.*]

Including always all portions of the above-described railways, and each and every one thereof, within the limits of any cities and towns above mentioned, and also all portions within the limits of any and all cities and towns not herein mentioned.

Also, all the right, title, estate, interest, and property of the railway company in and to any and all lines of railway, extensions, and branches, including the franchises appurtenant thereto, and any and all bonds, stocks, and other property of every kind or description (notwithstanding that the same are not now particularly set forth in this indenture), which from time to time, in the manner hereinafter provided, shall be designated in the verified certificates to be furnished by the railway company to the trustee whenever it shall make any call for any of the million dollars bonds reserved under the provisions of this indenture for the acquisition or construction of branch lines or extensions, or the acquisition of stocks or bonds thereof, or for the purchase of rolling stock, or for new construction or betterments, or for the purchase of additional property; and also any and all franchises and rights of every kind relating to any and all lines of railway, extensions, branches, and other property constructed or acquired from the use of such bonds or their proceeds. But, nevertheless, the railway company reserves, and shall continue to have, and from time to time may exercise, the right, by the employment of its credit, or of funds not derived from any use of such reserved bonds or their proceeds, to construct or acquire other lines of railway, or other

branches, extensions, stocks, bonds, or other property, or interests therein, and to create liens thereon and on the franchises appurtenant thereto, and on the rents, income, and profits thereof, which liens, as to all such property, may be made superior and prior to all liens thereon by virtue of this indenture.

TOGETHER with all and singular the franchises, rights, and privileges now or hereafter appurtenant to, or used in connection with, the lines of railway above mentioned, or any branch or leased or operated line thereof. [*Here take in from Form No. 1320, from † to †, pages 1179, 1180.*]

Also the following shares of stock, to be transferred to the trustee as hereinafter provided: [*Here describe them.*]

Also the following bonds, to be delivered to the trustee as hereinafter provided: [*Here describe them.*]

Also, all the right, title, estate, interest, property, and franchises of the railway company of, in, and to any and all other lines of railway, extensions, and branches now owned, leased, or held by the railway company, or in which it has any interest whatsoever, wherever located, notwithstanding the same may not be particularly set forth or described in this indenture.

Also, all the right, title, estate, interest, property, and franchises of the railway company of, in, and to any and all lines of railway and branches by it hereafter acquired, held, owned, or leased, or in which it shall obtain and hold any interest, subject, nevertheless, to all conditions upon which any such property or interest shall be acquired, and to all provisions of this indenture concerning property hereafter acquired, and, as to any portion of such after-acquired property, subject also to the obligations, if any, secured by any pledge or mortgage of such property permitted by such provisions of this indenture.

And also, all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned, or transferred by the railroad company, or any one in its behalf, to the trustee, which is hereby authorized to receive any property, at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of bonds issued, or to be issued hereunder, and to hold and apply any and all such property subject to the terms hereof.

It being intended to include within the grant of this indenture, all lines of railway, extensions, branches, leaseholds, operating contracts, real estate, railroad property (including such bonds and shares of stock as are hereinbefore specifically conveyed) and other property of every kind conveyed to or acquired by, or for the benefit of, the railway company, party of the first part hereto, under or in pursuance of the decrees confirming the sales in foreclosure, and the deeds of the special masters and others executed or to be executed pursuant to such decrees, in the several suits hereinafter mentioned and the several suits ancillary thereto, and also under the several corporate deeds hereinafter mentioned, that is to say: [*here set forth at length the titles and substance of the proceedings, and the dates and dates of recording of the several deeds.*]

[*Here insert from Form No. 1320, from ‡ to ‡, page 1180.*]

ARTICLE 1. It is hereby mutually covenanted and agreed that all bonds hereby secured shall from time to time by the railway company be executed

and delivered for certification to the trustee, which shall thereupon certify and deliver the same to the railway company, or upon its order, as herein provided, and not otherwise. Only such bonds as shall bear the trustee's certificate duly indorsed thereon, and duly signed, shall be secured by this indenture or shall be entitled to any lien or benefit hereunder; and every such certificate of the trustee upon any bond executed in behalf of the railway company shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trusts hereby created. Such certificates may be made and bonds may be delivered hereunder in advance of registration or record of this indenture.

ARTICLE 2. Of the bonds authorized to be issued under and secured by this indenture, bonds to the amount of million dollars shall be certified by the trustee and delivered to the railway company, for its general purposes, immediately upon the execution and delivery of this indenture, or as soon as may be thereafter.

ARTICLE 3. Out of and from the remainder of such authorized issue, there shall be reserved, not immediately to be executed or certified by the trustee, bonds to the amount of million dollars, for the purpose of providing for the purchase, redemption, and acquisition by the trustee, as hereinafter provided, of the bonds now outstanding, secured by the following mortgages, which to the extent therein specified and in respect of the several properties therein mentioned are hereby expressly recognized and declared to constitute liens prior and superior to that created by this indenture. [*Here insert full statement of same.*]

The said million dollars of bonds hereby secured and reserved for the redemption, purchase, or acquisition of a like amount of bonds (hereinafter called "prior lien bonds") severally and respectively secured by the [twenty] mortgages last above mentioned shall from time to time be issued, certified, and delivered, only as follows, viz..

(a) Whenever and as often as the railway company shall tender, or cause to be tendered, any such prior lien bonds, together with all unmatured interest obligations thereunto belonging, the trustee forthwith shall receive the same, and in exchange therefor shall certify and deliver to the railway company, or upon its order, a like amount at par of the said bonds hereby secured and reserved.

(b) Whenever and as often as the railway company, after the maturity of any such prior lien bonds, shall tender, or cause to be tendered, cash sufficient to purchase or acquire the same at par, the trustee forthwith shall receive such cash, and in consideration thereof shall certify and deliver to the railway company, or upon its order, an equivalent amount at par of the said bonds hereby secured and reserved.

(c) All cash so received by the trustee shall be by it held and applied to the purchase and acquisition at par of an equivalent amount at par of prior lien bonds, which shall have matured at or before the time of such purchase or acquisition.

All and every prior lien bond received by the trustee shall be by it stamped with the words "Not negotiable, but held in trust for the purposes declared in the first consolidated mortgage deed of the Railway Company, dated , ," and shall be by the trustee held as additional security for the payment of this mortgage debt.

The railway company shall provide and maintain books wherein it shall register as the property of the trustee, all such prior lien bonds received by the trustee; and except as herein expressly provided, no such prior lien bond shall be canceled, unless the holder thereof, at time of maturity, shall require cancellation as a condition of surrender.

No bond of the Railway Company, or of the Railway Company, shall be canceled unless the holder require cancellation, as aforesaid, unless or until all of the property mortgaged to secure the issue to which such bond belongs, shall have been lawfully conveyed in fee simple and free from incumbrances to the railway company, its successors or assigns; but, upon every such conveyance of the property mortgaged for any one of such three issues, the trustee may cancel and surrender to the railway company all of the bonds of such issue then held by it, and thereupon such property so mortgaged for such issue of prior lien bonds forthwith, *ipso facto*, and without further conveyance, shall become and be part of the premises hereby mortgaged, and shall be hereby conveyed, as though herein expressly and specifically conveyed, mortgaged, and pledged. Nevertheless, the railway company, its successors and assigns may, and shall, execute any and all transfers, assignments, or conveyances, from time to time desired by the trustee, in order expressly and specifically to subject to the lien of this indenture any property so acquired.

ARTICLE 4. Out of the remainder of the authorized issue hereunder, there shall be reserved, to be executed and to be certified by the trustee, not immediately, but only when and as required, bonds to the amount of million dollars, for the purchase and acquisition by the trustee, as hereinafter provided, of valid certificates of shares of stock issued by the following companies, viz.: [*here describe them*].

The trustee shall not certify any of these million dollars of bonds so reserved under this article except upon receiving equivalent amounts at par of the shares so to be purchased and acquired. For all such shares from time to time so received, the trustee, upon request of the railway company, shall certify and deliver to it \$1,000 par value in such bonds for each \$1,000 par value in such shares so received by it. All such shares when and as received by the trustee shall be transferred to its name and it shall hold the same as part of the trust estate hereunder, and subject to all the trusts, terms, and provisions of this indenture.

ARTICLE 5. Out of the remainder of the authorized issue hereunder there shall be reserved, to be executed and to be certified by the trustee, not immediately, but only when and as required, bonds to the amount of million dollars, for retiring or acquiring, as hereinafter provided, equipment bonds and equipment trust certificates, warrants, notes, or obligations which have matured, or shall mature, as hereinafter set forth, and to reimburse the railway company for such of them as already it has acquired or retired, or from time to time hereafter shall acquire and retire, viz.: [*here describe them fully*].

The trustee shall not certify any of the million dollars of bonds so reserved in this article for the purpose of redeeming such equipment bonds, and equipment trust certificates, warrants, notes, or obligations, except upon receiving satisfactory evidence that such equipment bonds, and equipment trust

certificates, warrants, notes, or obligations to a corresponding amount have been redeemed, paid off, and canceled.

The certificate of the president or of one of the vice-presidents, and of the treasurer or auditor of the railway company, setting forth the payment of a specified amount of such equipment bonds, and equipment trust certificates, warrants, notes, or obligations, and that such payment has not been set forth in any certificate theretofore executed pursuant hereto, shall be sufficient evidence to the trustee of the payment thereof to the amount specified, but in any such case the trustee, if it deem proper, may require additional evidence of such payment satisfactory to it.

Upon receiving any such certificate of the president or of one of the vice-presidents and of the treasurer or auditor of the railway company, and, when required, other evidence satisfactorily showing the payment of any of such million dollars of equipment bonds, equipment trust certificates, warrants, notes, or obligations, the trustee, from time to time, from and out of the bonds so reserved therefor, as aforesaid, shall certify and deliver to the railway company, or upon its written order, \$1,000, in such reserved bonds at par for each and every payment of \$1,000 of such outstanding equipment bonds, equipment trust certificates, warrants, notes, or obligations, as specified in every such certificate of payment.

ARTICLE 6. Out of the remainder of the authorized issue hereunder, there shall be reserved, to be executed, and to be certified by the trustee, not immediately, but only when and as required, bonds to the amount of million dollars, which from time to time the trustee shall certify upon resolutions of the board of directors of the railway company, stating that such bonds, to the amount stated in such resolutions, or the proceeds thereof, are to be set aside separate and apart from all other assets and funds of the railway company, and are to be used only for the construction or acquisition of branch lines or extensions, or for the acquisition of stocks or bonds thereof; or for the purchase of rolling stock; or for construction and betterments; or for the purchase, subsequent to said date, of additional property upon, along, or appurtenant to lines of railway of the railway company now or hereafter made subject to the lien of this indenture, or to reimburse the railway company for outlays made for the purposes aforesaid, or some one or more of them.

From and out of the million dollars bonds reserved under this article the trustee shall certify and shall deliver to the railway company, or upon its order, bonds as follows, viz.:

Upon January 1, , or upon any day thereafter, but prior to December 31, , upon such resolution or resolutions of the board of directors of the railway company, million dollars of bonds at par, shall be so certified and delivered.

In each and every calendar year after December 31, , there shall be so certified and delivered such additional amount of such bonds, not exceeding million dollars par value in any calendar year, as from time to time shall be specified in similar resolutions, but in every instance, before certifying and delivering any such additional bonds, the trustee shall require the railway company to furnish, in addition to such resolution, the verified certificate or certificates of some person or persons cognizant of the facts, stating

(a) That all such bonds and the proceeds of all such bonds certified and delivered on or subsequent to the date of the last preceding resolution, or resolution and verified certificate, as the case may be, have been used for such purposes or for some one or more of them, or to reimburse the railway company as above provided;

(b) The amount of such bonds so certified and delivered, which, or the proceeds of which, on or subsequently to the date of the last preceding resolution, or resolution and verified certificate (as the case may be), shall have been actually used for any such purpose, or to reimburse the railway company, as above provided, and specifically indicating each and every such acquisition or construction of any railroad, track, structure, betterment, rolling stock, or other new property, and each and every acquisition of the bonds or stock of any company owning or controlling any railroad or other property (which stock shall be acquired only when a majority of the total capital stock of such company can and shall be obtained, unless such majority shall theretofore have been acquired and pledged hereunder), and also stating in detail the amount of bonds, or proceeds of bonds, and cash used or expended for each and every such purpose.

(c) That the price paid in bonds or their proceeds for such construction or acquisition was not in excess of the fair value of the work done or property acquired, and that the bonds included in such verified certificate were sold, disposed of, or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition, or accounting.

In case any new property shall have been acquired by the use of any such bonds or their proceeds, every such verified certificate shall further state whether the property so acquired is known or believed to be subject to any lien or charge prior to this indenture (excepting always the hereinbefore recited mortgages, so far as any of them may attach thereto, and also excepting any undetermined liens or charges incidental to construction), and shall specify the amount of any such prior lien or charge known or believed to exist; and in case any bonds or any shares of the capital stock of any other company shall have been acquired by the use of any such bonds or their proceeds, every such verified certificate shall state whether the property of such other company, whose bonds or stock shall have been so acquired, is known or believed to be subject to any lien or charge prior to that securing such bonds of such company, and whether the company, whose capital stock shall have been so acquired, is known or believed to be indebted (except to the railway company) in any amount, and whether its property is known or believed to be subject to any lien or charge, and in each instance specifying the amount of any such lien or charge known or believed to exist. In every case of any such lien, charge, or indebtedness (except to the railway company or for undetermined liens or charges incidental to construction), and during the continuance of such lien, charge, or indebtedness, there shall be reserved therefor as provided in article two hereof a like amount at par of bonds hereby secured; but no creditor, or claimant, on account of any such lien, charge, or indebtedness, shall have any right, interest, or claim in or to any such reserved bonds, which shall be so reserved solely for the benefit of the railway company and for the protection of the holders of bonds issued hereunder.

Every such verified certificate shall be accompanied by the written statement of the president or of one of the vice-presidents, and of the auditor or

treasurer, of the railway company, that they believe such certificate to be true, and that such bonds have been used and the expenditures therein certified have been made only for purposes properly chargeable to capital account of the railway company, and that no part thereof has been used for ordinary maintenance of the lines of railway or other property owned or in any way controlled by the railway company, or for replacements, or other purposes ordinarily treated by railroad companies as a part of their operating expenses. Together with such statements and verified certificates there shall be delivered to the trustee certificates for all shares of stock and all bonds so acquired, and such further instruments and conveyances as may be necessary to vest in the trustee all new property so acquired, and, so far as may be, any and all obligations taken up or acquired with or by the said bonds or their proceeds; together with written opinion of counsel for the railway company to the effect that such instruments and conveyances are sufficient for that purpose, or that no additional instrument or conveyance is necessary. The certificates for all shares of stock so acquired shall be duly transferred into the name of the trustee, and any bonds so acquired shall, if practicable, be transferred in like manner, or, if not susceptible of such transfer, they shall be plainly indorsed as the property of the trustee hereunder.

Such resolutions, statements, and verified certificates shall be deemed and taken as plenary authority to the said trustee for its certification of such bonds or of any one or more of them. But it is agreed that bonds in excess of an aggregate amount of million dollars shall not be issued or certified out of or from the million dollars reservation under this article, in any calendar year.

ARTICLE 7. The railway company covenants: That, retaining possession as hereinbefore provided, it will well and truly pay and discharge, or will acquire and pledge hereunder, at or before the several dates of maturity thereof, all of the million dollars of prior lien bonds mentioned in article three hereof; and that it will until such maturity thereof duly, punctually, and regularly pay the interest on all such bonds, not acquired and held hereunder by the trustee.

That, as and when, but no further than expressly required by the terms of any of the said [twenty] prior lien mortgages, it will from time to time cause to be issued thereunder bonds for delivery in exchange for other outstanding bonds for which reservation is made in article three hereof; but no issue shall be made thereunder that shall increase the aggregate prior lien indebtedness of million dollars, or that, except for such exchange, shall increase the indebtedness secured by any one or more of said [twenty] prior lien mortgages.

That it will duly and punctually pay all lawful claims and demands which, if unpaid, might take precedence over this indenture, and that each and every company, whose bonds or capital stock in whole or in part are, or shall be, pledged hereunder, at all times during the continuance of such pledge, will duly and punctually pay all lawful claims and demands which, if unpaid, might take precedence of any mortgage securing bonds of such company, or which might, in anywise, impair the value of the capital stock of such company if pledged hereunder; and that the railway company will enforce any and all of its claims and demands against any such company only in such manner as not to prejudice or affect the bonds secured by this indenture.

That, except as herein otherwise expressly provided, it will not sell any bond

or share of stock, now or hereafter pledged by it under this indenture, nor pledge or agree to pledge or hypothecate the same, except subject to the prior lien hereof; that it will not by any voluntary act part with the ownership and title of such bonds or stock, or of any part of such bonds or stock, or its equity of redemption therein, or the voting power thereof; that it will, subject to the lien hereof, hold all and singular such stock of any company, of whose capital it may control the major part, in such manner that it shall retain in itself the rights and powers of a majority shareholder in the capital stock of every such company; and that as such holder of such stock it will not by affirmative vote, or by abstaining from voting, sanction or permit any increase of the capital stock of any such company or the creation of any mortgage or other lien upon the railroad or property of any such company, unless effective provision be made that all bonds secured by any such additional mortgage and all additional shares of such stock (which shares shall be fully paid and non-assessable), shall, at the time of their issue, be delivered and pledged to the trustee, to be by it held, subject to all the trusts of this indenture, with the same effect as if such bonds and shares had been delivered and pledged to it herein and at the time of the making hereof. But nothing herein contained shall prevent the extension at maturity of any bonds now or hereafter pledged to or held by the trustee under this indenture, and at the time of such pledge secured by any mortgage of any company, or prevent the issue of other bonds not exceeding the amounts so pledged, and secured by mortgage, in place thereof; it being distinctly understood that the time for the payment of the principal of any bonds so pledged hereunder may, at or before their maturity, be extended by the railway company (not then being in default hereunder), with the consent of the company which, at the time of such consent, shall own or control the property upon which such bonds so to be extended may be a lien, and also that other bonds secured by mortgages, not exceeding the amounts pledged hereunder, may be issued in substitution therefor, and that in every such case such new bonds shall forthwith *ipso facto* come under the lien and grant of this indenture, and shall forthwith be delivered to the trustee.

That whenever by the use of bonds hereby secured, or the proceeds thereof, it shall acquire any property subject to any outstanding lien, other than those hereinbefore mentioned, and other than undetermined liens incidental to construction, it shall, by appropriate instrument or instruments, reserve out of the million dollars of bonds set apart by article 6, an amount at par equivalent to all such liens (except as aforesaid) on such property hereafter acquired, and the bonds so reserved shall be executed, certified, delivered, and used only for the retirement or acquisition of such liens, in amounts equivalent at least to the par of the bonds delivered therefor, and all the liens so retired or acquired shall be canceled or held by the trustee as, in its judgment, shall best protect the holders of the bonds hereby secured. This provision is, however, in nowise to modify the provisions of article 6, as to the amount of bonds which may be issued in the year 189 , and in the several subsequent calendar years, it being understood that such amount of bonds annually issuable, under said article 6, from the residue of said million dollars of bonds, is not reduced by this provision.

That it shall and will, from time to time, pay and discharge all taxes, assessments, and governmental charges lawfully imposed upon the lines of

railroad and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which might or could be held to be prior to the lien hereof, so that the priority of this indenture shall be fully preserved; and if any company whose stock or bonds, in whole or in part, are or shall be pledged hereunder, shall, at any time during the continuance of any such pledge, fail to pay all such taxes, assessments, and charges lawfully imposed upon the property of such company, or upon the income and profits thereof, it will itself pay and discharge the same.

[Here insert article 2, from Form No. 1320.]

ARTICLE . In case default shall be made by the railway company in the payment of any interest on any bond at any time issued and secured by this indenture, or by any mortgage recited in article 6 hereof, and such default shall continue for a period of six months; or in case default shall be made by the railway company in the due and punctual payment of the principal of any bond secured hereby or by any mortgage recited in article 3 hereof, when and as the same shall mature, or in the like payment of any equipment bond, or equipment trust certificate, warrant, note, or obligation recited in article 5 hereof; or in case default shall be made by the railway company in the payment of any tax, assessment, or other governmental charge lawfully imposed or levied upon any part of such railways, property, and premises, or the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the trustee or from any holder of bonds hereby secured; [Here take in article 3, from Form No. 1320, at **, page 1180.]

[Here take in articles 4 to 25, from Form No. 1320.]

ARTICLE . Until default be made as aforesaid, and some action in respect thereof shall have been taken by the trustee, or by bondholders, as herein authorized, the railway company shall have the right to vote upon all shares of stock pledged hereunder, for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such pledge had not been made. From time to time the trustee shall give to the railway company, or its nominee, suitable proxies for such purposes.

ARTICLE . The trustee may and shall do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any and all companies whose shares are pledged hereunder, and for such purposes from time to time it may sell or assign, transfer and deliver so many shares of the stocks of the several companies as may be necessary to qualify persons to act as directors of said companies.

ARTICLE . If, at any time, the obligors in any of the bonds at any time pledged hereunder shall fail to make payment of either the principal or interest thereof, according to the tenor of such bonds, the trustee, upon the written request of the railway company, and not otherwise, shall cause proper and apt proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose the mortgage, or mortgages, by which such bonds shall be secured, and if the property covered by such mortgage, or mortgages, shall be sold under foreclosure, it shall cause the same to be purchased for and in the name of the railway company, if the amount bid at such sale shall not exceed the full amount due on such bonds, and the cost and expenses of such suit and sale. If such property shall sell for a larger

sum, the trustee shall receive the proceeds of such sale, and shall apply the same as herein provided. When any railroad or railroad property shall be purchased by the trustee, for and in the name of the railway company, as above provided, the lien of this indenture immediately and *ipso facto* shall attach to, and bind, the property so purchased.

When the trustee shall receive moneys arising from the foreclosure of any mortgage executed to secure the payment of bonds pledged hereunder, it shall apply such moneys in the manner provided in article 4 hereof, for the application of money arising from the release of real property mortgaged hereunder.

ARTICLE . No assignment or pledge hereunder of any shares of stock of any company or companies now or hereafter deposited hereunder, shall prevent the consolidation or merger of any one or more of said companies with, or its sale to, the railway company, but such consolidation, merger, or sale may be made under any laws to which such companies may then be subject, anything in this indenture contained to the contrary notwithstanding: PROVIDED, HOWEVER, that such consolidation, merger, or sale shall be made only upon such terms as shall be approved by the trustee, or by the holders of a majority in interest of the bonds secured by this indenture. In the event of the consolidation or merger of any one or more of the said companies with, or its sale to, the railway company, this indenture immediately shall become and be a lien upon the property of the company so consolidated or merged with, or sold to, the railway company, with the same force and effect as if expressly conveyed by this indenture, and the holders of the bonds hereby secured shall always have as full and complete a lien upon such property as that herein created by the pledge of the stock and bonds of such constituent companies to the trustee hereunder.

Neither shall the assignment or pledge hereunder of any capital stock of any company or companies prevent the consolidation or merger of any such companies with each other; but such consolidation or merger may be made under any laws to which such companies may then be subject, anything in this indenture contained to the contrary notwithstanding: PROVIDED, HOWEVER, that such consolidation or merger shall be made only upon such terms as shall be approved by the trustee or by the holders of a majority in amount of the bonds secured by this indenture; and that the portion of the capital stock of any such consolidated or merging company (but never less than a majority thereof), issued for and in lieu of any stock previously pledged hereunder, shall always bear to the total capital stock a proportionate relation at least as high as that borne by such previously pledged stock to the total capital stock of such constituent companies. Such portion of such stock of such consolidated or merging company shall be assigned to and deposited with the trustee, and shall become and be subject to the lien of this indenture with the same force and effect as if expressly pledged by this indenture; and the holders of the bonds hereby secured shall always have a lien upon such portion of such stock of such consolidated or merging company as full and complete as upon the stock and bonds of such constituent companies by reason of the pledge thereof hereunder.

The trustee may do any and all things proper to carry into effect the purposes of this article.

ARTICLE . Any sale pursuant to any provision hereof, because of any default of the railway company, whether made under the power of sale hereby

granted and conferred, or under or by virtue of judicial proceedings, or some judgment or decree of foreclosure and sale made by any court of competent jurisdiction, shall be made subject to the prior right or rights of the mortgage bonds hereinbefore mentioned as entitled to priority, and subject to the lien of any mortgage or mortgages prior to this indenture upon any property hereby conveyed to the extent of such lien or liens respectively.

[Here take in articles 26 to 31, and witness clause, etc., from Form No. 1320.]

1324. Equipment Mortgage.

NOTE.—The following equipment mortgage is drawn in the nature of a consolidated mortgage to provide for the payment and taking up of underlying liens. If there are no such prior liens, the provisions relating thereto may be omitted.

THIS INDENTURE, made this day of , A. D. , between the B. & C. Railroad Company, party of the first part, hereinafter called the railroad company, and the Trust Company of New York, trustee, party of the second part, hereinafter called the trustee, WITNESSETH:

WHEREAS, the Machine Works, hereinafter called the machine works, is the owner of certain railroad equipment and rolling stock of the quantities and kinds, and at their original cost, of the value, and marked with the number of the railroad company, as follows:

| Quantities and kinds. | N. & W. R. R. Co.'s numbers, both inclusive. | VALUED AT | |
|---|--|--------------------------------|-------------------|
| | | Each. | Total. |
| 5 consolidation freight locomotives | 17 to 21 | \$11,250 | \$56,250 |
| 2 passenger locomotives..... | 29 and 30 | 7,700 | 15,400 |
| 406 hopper gondola cars..... | 7808 to 8373 | 440 | 178,640 |
| 44 flat cars..... | 8439 to 8482 | 350 | 15,400 |
| 10 passenger coaches..... | 55 to 64 | 5,375 | 53,750 |
| 4 passenger locomotives..... | 31, 33, 35, and 37 | 8,197 | 32,788 |
| 6 shifting locomotives..... | 132 to 137 | 7,425 | 44,550 |
| 13 cabin cars..... | 133 to 145 | 440 | 5,720 |
| 150 stock cars..... | 2846 to 2995 | 570 | 85,500 |
| 155 box cars..... | 92 } 63 } | 1341 to 1432 } 498 to 500 } | 575 } 89,125 } |
| In all of the value of..... | | | \$577,123 |

AND WHEREAS, the railroad company has agreed and hereby does covenant and agree to and with the trustee that the said railroad equipment and rolling stock shall form part of the security of this deed of trust or mortgage, and the machine works, by instrument of writing (to which instrument of writing reference is hereby made for a description of said railroad equipment and rolling stock), made, dated, executed, and delivered contemporaneously herewith, and deposited with the trustee, has, at the request and direction of the railroad company and in consideration of the sum of \$500,000 paid to the machine works by the railroad company, sold, transferred, and delivered unto the Trust Company of New York, as trustee, for the purposes hereof, all of the said railroad equipment and rolling stock; and,

WHEREAS, the railroad company is desirous of acquiring from the trustee all the above-mentioned railroad equipment and rolling stock of the machine works, and in addition thereto other railroad equipment and rolling stock of the value of about \$4,000,000 to be subsequently purchased hereunder by

the trustee, and necessary for the operation of said railroad, together amounting at its original cost value to about \$4,500,000, and is willing to secure the purchase money for the same and for the other indebtedness hereinafter mentioned by a deed of trust or mortgage thereon, the title of all of said railroad equipment and rolling stock to be only vested in the railroad company, subject to and not until the full and complete payment of all the bonds issued under the said deed of trust or mortgage, and the performance of all the other terms and conditions of the said deed of trust or mortgage; and,

WHEREAS, the railroad company has in its use and possession certain railroad equipment and rolling stock of the value at its original cost of \$2,000,000, acquired and used by it under certain car trust leases and contracts, hereinafter more particularly mentioned, upon which there are outstanding and unpaid as of _____, _____, lease warrants amounting to \$2,000,000, a detailed statement of which appears on the Schedules A, B, C1, and C2 hereto annexed and made part hereof, as by reference thereto will more fully appear; and it is desired by the railroad company that the car trust obligations and securities based thereon shall be retired by the purchase by the trustee of said deed of trust or mortgage by means of bonds issued under the said deed of trust or mortgage or their proceeds; and,

WHEREAS, copies of all said car trust leases and contracts have, contemporaneously with the execution and delivery hereof, been deposited with the trustee, such car trust leases and contracts being as follows: [*here describe them in full.*]

To all of which contracts reference is hereby made for the terms and conditions thereof; and,

WHEREAS, it has been agreed that this deed of trust or mortgage shall be created to secure the said purchase money for the railroad equipment and rolling stock so acquired and to be acquired by the railroad company from the trustee, and for said car trust obligations and securities purchased by the trustee; and,

WHEREAS, at the annual meeting of the stockholders of the railroad company, held at the principal office of the railroad company in the city of _____, in the state of _____, on the _____ day of _____, _____, it was unanimously

“Resolved, That the board of directors has and it is hereby given the consent of the stockholders of this company and hereby is authorized to create an issue of bonds of this company to an amount not to exceed \$5,000,000, for the purpose of acquiring from time to time additional railroad equipment and rolling stock for the use of the company, and of retiring the existing car trust obligations and securities on railroad equipment and rolling stock used by the company, such bonds to be secured by deed of trust or mortgage upon such additional railroad equipment and rolling stock, and upon such car trust obligations and securities in such manner and on such terms as to the board may seem best, and in order that the board may carry this resolution into effect, to use for that purpose any of the equipment trust bonds or securities owned by the company;” and,

WHEREAS, at a meeting of the directors of the railroad company, held on the _____ day of _____, _____, it was unanimously resolved:

“WHEREAS, in order to acquire certain railroad equipment and rolling stock necessary for the operation of this company, and to secure the payment

of the purchase money therefor, and of the money necessary to retire or acquire the outstanding car trust obligations and securities on certain railroad equipment and rolling stock used by the company, it is necessary for the company to issue its bonds to the extent of five million dollars to be secured upon the said railroad equipment and rolling stock and upon the car trust obligations and securities purchased or acquired by the said bonds or their proceeds:

"Resolved, That this company make and issue its bonds for the aggregate sum of five million dollars, which bonds shall be of the denomination of one thousand dollars each, and shall be numbered consecutively from one to five thousand, both inclusive, and shall be substantially in the following form, to wit:

| | | |
|--------------|---------------------------|----------|
| | UNITED STATES OF AMERICA. | |
| No | State of | \$1,000. |
| | B. & C. RAILROAD COMPANY. | |
| | EQUIPMENT MORTGAGE LOAN. | |
| | Five per cent. Gold Bond. | |
| | Total issue, \$5,000,000. | |

The B. & C. Railroad Company, for value received, acknowledges itself indebted to the Trust Company of New York, or bearer, or, if this bond is registered, then to the registered owner hereof as hereinafter provided, in the principal sum of one thousand dollars, United States gold coin, and promises, to pay the said sum to the said trust company, or bearer, or registered owner, on the day of , one thousand nine hundred and , at the office or agency of said railroad company in the city of Philadelphia or New York, and also to pay meanwhile, in like gold coin, at said office or agency, interest on said principal sum half-yearly on the 1st days of and in each year, at the rate of five per centum per annum, on the presentation and surrender of the annexed coupons, and as they severally become due; and without deduction from either principal or interest for any United States, state, or local tax whatsoever which the railroad company is or may be required by law to retain therefrom, and which it hereby agrees to pay.

This bond is one of a series of five thousand bonds of like tenor, date, and amount, numbered consecutively from one upwards, not to exceed in the aggregate \$5,000,000, secured by a deed of trust or mortgage, bearing even date herewith, made by the B. & C. Railroad Company to the Trust Company of New York, as trustee, and secured upon the rolling stock and railroad equipment and car trust obligations and securities described and set forth in said deed of trust or mortgage, to which reference is hereby made for the provisions thereof and for all the terms and conditions upon which the said bonds are issued and secured, and this bond is moreover secured by a sinking fund, of three per cent. per annum, payable to the said trustee semi-annually by the railroad company on bonds countersigned and delivered by the trustee as provided in said deed of trust or mortgage; and is liable to be redeemed at any time before the maturity hereof, on or after the day of , at par and accrued interest, by the operation of said sinking fund, and all interest shall cease upon its being drawn by lot for such purpose, and upon notice thereof given, as in said deed of trust or mortgage is more fully provided.

This bond is also liable to be redeemed at the option of the railroad com-

pany on or at any time after the 1st day of _____, 189____, at par and accrued interest, on its being called for the purpose of redemption and notice given for ninety days, as is in the said deed of trust and mortgage more fully provided.

This bond shall pass by delivery or by transfer on the books of the said railroad company, but after a registration of ownership certified hereon by the secretary or transfer agent of the said railroad company, no transfer except on its books shall be valid unless the last preceding transfer shall have been to bearer and transferability by delivery has been thereby restored; but this bond shall continue susceptible of successive registrations to bearer at the option of the holder, and registry shall not restrain the negotiability of the coupons by delivery merely.

This bond shall not become valid until the certificate indorsed hereon shall have been signed by or on behalf of the trustee under said deed of trust or mortgage.

IN WITNESS WHEREOF, the B. & C. Railroad Company has caused its corporate seal to be affixed, and this bond to be signed by its president and secretary, the _____ day of _____, in the year nineteen hundred and _____.

B. & C. Railroad Company,

[SEAL.]

By

ATTEST:

President.

Secretary.

"With coupons thereto attached, for the semi-annual interest to become due on such bond, in general form and substance as follows, except as to the date of payment:

COUPON.

\$25.

On _____, the B. & C. Railroad Company will pay to the bearer, at its office or agency in Philadelphia or New York, twenty-five dollars in gold coin, being six months' interest on its equipment mortgage bond No. _____.

Treasurer.

"And that the following form of certificate be placed upon each and all of the said bonds issued under the security of said deed of trust or mortgage:

TRUSTEE'S CERTIFICATE.

It is hereby certified that this bond is one of a series of five thousand bonds, each of the denomination of one thousand dollars, issued under and secured by the mortgage or deed of trust referred to within.

Trust Company of New York,

By

President."

"Resolved, That for the purpose of securing the payment of the said bonds and interest which shall accrue thereon, this company shall make, execute, and deliver to the _____ Trust Company of New York, trustee, a deed of trust or mortgage of all and singular certain railroad equipment and rolling stock, to be acquired by the B. & C. Railroad Company from the said trustee and heretofore belonging to the _____ Machine Works, of the amounts and kind, and at the original cost, of the value, and marked with the number of the _____ Railroad Company, as follows: [*Here repeat schedule at the beginning of this mortgage.*]

and also of all other railroad equipment, and rolling stock, and all lease war-

rants, car trust certificates, obligations, and securities purchased or acquired by the trustee with the bonds or proceeds of bonds issued under said deed of trust or mortgage; each locomotive and car so acquired to be marked, "Owned by the Trust Company of New York, trustee, B. & C. equipment mortgage;" such deed of trust or mortgage to be in trust for the benefit and security of the holders of such bonds to the extent aforesaid, without preference, priority, or distinction as to lien or otherwise, so that each bond to be issued shall have the same right, lien, or privilege and security thereunder as though they had all been executed and delivered simultaneously with the execution and delivery of said deed of trust or mortgage.

"Resolved, That until the said five thousand bonds or obligations of this company for one thousand dollars each, intended to be secured by the said deed of trust or mortgage, shall be engraved, executed, and delivered, the said bonds or obligations of the company, or any of them, may be represented by one or more written or printed obligations of this company, of the same aggregate amount, in such form and amounts, and bearing such dates as the president of this company shall determine at the time of the execution and delivery thereof, and as shall be approved by the trustee; and such written or printed obligations so issued shall have the same rights, remedies, lien, and security that appertain to the five thousand bonds for one thousand dollars each when issued under the provisions of the said deed of trust or mortgage, and shall, until surrendered in exchange for a like amount of engraved bonds, represent the same indebtedness;

"Resolved, That the president be and he hereby is authorized for and on behalf of this company, and as its act and deed, to affix its corporate seal to the said bonds and obligations and mortgage or deed of trust, and to sign the same in its name as such president, and to cause the same to be duly attested by the secretary, and when so executed to acknowledge and deliver and record the said deed of trust or mortgage."

And at said meeting of the board of directors, the form of this deed of trust or mortgage, together with the Schedules A, B, C1, and C2 thereto annexed and made part hereof, having been then and there submitted and entered at length on the minutes, a further resolution was adopted, as follows:

"Resolved, That the deed of trust or mortgage to be executed, delivered, and acknowledged by the president of this company in its behalf, as authorized and directed this day, shall, together with the Schedules A, B, C1, and C2 thereto annexed and made part thereof, be in the form now submitted, which form is hereby adopted and approved." And,

WHEREAS, the said railroad company, in pursuance of said resolutions and of the laws of the state of _____, the said company in that behalf enabling, and of all and every legal power and authority in it vested, proposes to make, execute, issue, and negotiate the five thousand bonds or obligations of the said company of one thousand dollars each, in the form hereinbefore set out, to be secured hereby, to the amount of five million dollars;

NOW, THIS INDENTURE WITNESSETH: That the said the Trust Company of New York, trustee aforesaid, in consideration of the sum of one dollar lawful money of the United States and of other valuable considerations unto it well and truly paid by the said railroad company at the time of the execution hereof, the receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, has furnished, granted, bargained, sold, assigned, set

over, released, conveyed, and confirmed, and by these presents does furnish, grant, bargain, sell, assign, set over, release, convey, and confirm unto the said railroad company, and to its successors and assigns forever, subject to the payment of the principal and interest of the bonds or obligations intended to be secured hereby, amounting to five million dollars (\$5,000,000), when and as the same shall become due and payable according to the tenor and effect of the said bonds or obligations (to be made and issued hereunder for the purpose of purchasing or acquiring said necessary railroad equipment and rolling stock, and purchasing or acquiring car trust obligations and securities), and according to the terms hereof, and to the payment of such taxes upon the said principal and interest of said bonds as the railroad company shall agree herein or in said bonds, or any of them, to pay,

All and singular the railroad equipment and rolling stock, of the amounts and kind, and at their original cost, of the value, and marked with the number of the railroad company, as follows: [*here repeat schedule, at the beginning of this mortgage.*]

(Being the same railroad equipment and rolling stock acquired, as hereinbefore stated, by the said, the Trust Company of New York, trustee, from the Machine Works for the purposes hereof, under indenture made, dated, executed, and delivered contemporaneously herewith, and deposited with said trustee.)

And also all the other railroad equipment and rolling stock that may be purchased or acquired by the trustee with bonds or with the proceeds of bonds issued under and secured by this deed of trust or mortgage, as hereinafter provided in the second article hereof.

And also all the car trust securities and obligations purchased or acquired by the trustee with bonds or with the proceeds of bonds issued under and secured by this deed of trust or mortgage as hereinafter provided in the third article hereof.

THE TITLE, HOWEVER, to all said railroad equipment and rolling stock and car trust securities and obligations to be retained under the terms hereof by and in the Trust Company of New York, as trustee for the equal *pro rata* benefit or security of the holders of bonds issued and to be issued under and intended to be secured by this deed of trust or mortgage, and for all the purposes and subject to all the terms and conditions of this deed of trust or mortgage, which shall be and remain the first lien thereon until released by the trustee, or until all the bonds hereby secured are paid by the terms hereof.

AND THIS INDENTURE FURTHER WITNESSETH: That the B. & C. Railroad company, as well in consideration of the premises, and for the purposes of securing the payment of the principal and interest of the said bonds when and as the same shall become due and payable according to the tenor and effect of the said bonds (so to be made and issued for the purpose of purchasing or acquiring the said railroad equipment and rolling stock, and purchasing or acquiring said car trust obligations and securities), and such taxes upon the said principal and interest of said bonds as the company shall agree herein or in said bonds, or any of them, to pay, as of the sum of one dollar, lawful money of the United States, and of other valuable considerations unto it well and truly paid by the said, the Trust Company of New York, at the time of the execution hereof, the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants herein contained, has granted, bargained,

sold, assigned, set over, released, conveyed, and confirmed, and by these presents, in pursuance and execution of the power and authority in it in anywise vested, and in this behalf enabling, does grant, bargain, sell, assign, set over, release, convey, and confirm unto the said, the Trust Company of New York, trustee as aforesaid, and to its lawful successors or successor in the trusts hereby created, and their heirs, executors, administrators, and assigns forever,

All and singular the railroad equipment and rolling stock hereinbefore mentioned and described, of the amount and kind, and at their original cost, of the value and marked with the number of the railroad company, as follows: [*here repeat schedule.*]

And also all other the rolling stock and railroad equipment that may be purchased or acquired by the trustee with bonds or with the proceeds of bonds issued under and secured by this deed of trust or mortgage, as hereinafter provided in the second article hereof;

And also all the car trust securities and obligations that may be purchased or acquired by the trustee with bonds or with the proceeds of bonds issued under and secured by this deed of trust or mortgage, as hereinafter provided in the third article hereof.

TO HAVE AND TO HOLD the above-described railroad equipment and rolling stock and car trust obligations and securities, unto the said trustee, and its lawful successors or successor and assigns forever, to and for the only proper use and behoof of the trustee, its successors or successor and assigns.

BUT IN TRUST, NEVERTHELESS, for the equal *pro rata* benefit and security of all and every the persons or corporations who may be or become holders of the said bonds, or such of them as shall be issued by the railroad company, without preference, priority, or distinction as to lien or otherwise, of any over the others, by reason of priority in time of issuing or negotiating the same, and so that each and all of the said bonds, issued and to be issued as aforesaid, shall have the same right, lien, and privilege under and by this deed of trust or mortgage, and shall all be equally secured hereby, with like effect as if they had all been made, executed, delivered, and negotiated simultaneously on the date hereof; it being intended that the lien and security of all of the said bonds shall take effect from the date of the execution and delivery of this deed of trust or mortgage, whether the same shall actually be issued or sold, or disposed of, at such date, or whether they, or any part of them, shall be issued, negotiated and sold at some future date, and that the lien and security of this deed of trust or mortgage, and all the bonds that may be issued under the same, shall take effect from the date of the execution and delivery hereof as though the said bonds were upon such date actually sold and delivered to and held by innocent holders for value, and the lien and security of said bonds shall in no manner be altered, impaired, or prejudiced by the creation of subsequent deeds of trust or mortgages by the railroad company, or by the entry or acquisition of judgments or liens in any form by creditors at any future time.

AND IT IS HEREBY EXPRESSLY COVENANTED AND AGREED, by and between the parties hereto, the railroad company covenanting as well for itself as for its successors and assigns, and the trustee covenanting as well for itself as for its successors and assigns, that the said above-described railroad equipment and rolling stock and car trust obligations and securities so acquired or fur-

nished, or to be acquired or furnished, are charged, as part of the security of this deed of trust or mortgage, with the covenants following, and are to be had and holden by the trustee, upon and for the trusts, uses, and purposes following, that is to say:

First. The railroad company shall forthwith make, execute, and deliver to the trustee, bonds of the railroad company intended to be secured hereby, to an amount not exceeding in the aggregate five million dollars (\$5,000,000), which bonds for \$5,000,000 shall be countersigned or certified and delivered by the trustee from time to time as required, as hereinafter provided; and until the said bonds can be engraved the railroad company may execute and issue written or printed temporary bonds or obligations, in such form or forms, and in such amounts as may be approved and countersigned or certified by the trustee, and which shall be entitled to all the security hereunder, and be exchangeable for or convertible into the bonds to be issued hereunder, and which shall be by the trustee canceled upon such exchange or conversion being effected; and when bonds or obligations are countersigned or certified by the trustee to the effect that they are issued under and secured by this deed of trust or mortgage, such certificate shall be conclusive evidence that said bonds or obligations have been issued in accordance with and are entitled to the security of this deed of trust or mortgage, whatever the form of such bonds or obligations may be.

Second. WHEREAS, it is intended that out of the issue of \$5,000,000 of bonds intended to be hereby secured, four million dollars (\$4,000,000) of said bonds shall be retained by the trustee for the purpose of acquiring by purchase or otherwise, and furnishing to the railroad company railroad equipment and rolling stock, other than the railroad equipment and rolling stock of the value of \$577,123 hereinbefore particularly described and set forth, the title and ownership of which additional railroad equipment and rolling stock shall be vested in the trustee and shall remain part of the security of this deed of trust or mortgage;

Now, THEREFORE, the railroad company, for itself, its successors and assigns, doth hereby covenant and agree with the trustee, and with the respective persons and bodies corporate who may at any time be or become holders of the bonds and coupons hereby secured, that out of the bonds secured hereby, four million dollars (\$4,000,000) of said bonds, or the cash proceeds thereof, shall be reserved and held by the trustee to be used and employed in acquiring by purchase or otherwise, in the name of the trustee, and for the benefit and further security of the trust, such railroad equipment and rolling stock, as, by the proper certificate or voucher of the president of the railroad company, the trustee shall be required to acquire by purchase or otherwise from the machine works, or such other persons, firms, and corporations, and furnish to the railroad company, and upon such terms and conditions, and at such prices as may be prescribed in such certificate or voucher of the president of the railroad company, and that none of the said bonds so reserved or their proceeds shall be used and employed for any other purpose; that all of the \$4,000,000 bonds or their proceeds, having been deposited with the trustee, shall be held by it as the custodian of the same until required to be used from time to time for the purposes herein mentioned, when, upon the certificate or voucher of the president of the railroad company, the said bonds, or their proceeds, shall be delivered to the railroad company, or to whomsoever the certificate or voucher of the president of the railroad com-

pany may direct, upon there being deposited with the trustee the proceeds thereof, or the bills of sale to the trustee for the railroad equipment and rolling stock purchased or acquired by the trustee with the same; all bills of sale as aforesaid to be first approved, certified, and accepted by the president of the railroad company, by proper certificate or voucher, and such approval, certificate, and acceptance shall be conclusive evidence of acceptance of such railroad equipment and rolling stock to the satisfaction of the railroad company and the discharge of the trustee; and that the said bonds or the cash proceeds thereof shall be used by the trustee in acquiring, in the manner hereinbefore provided, railroad equipment and rolling stock, and all of the railroad equipment and rolling stock which may be so purchased or acquired by the trustee shall be transferred and conveyed by the persons, firms, or corporations furnishing the same directly to the trustee, and shall be held by the trustee in its name and ownership, in trust for the equal *pro rata* benefit or security of the holders of bonds issued under and intended to be secured by this deed of trust or mortgage, for all the purposes and subject to all the terms and conditions of this deed of trust or mortgage, and as part of the security of the same, which shall be and remain the first lien thereon until released by the trustee, or until all the bonds hereby secured are paid by the terms hereof.

Third. WHEREAS, it is intended that out of the issue of \$5,000,000 of bonds intended to be secured hereby one million dollars (\$1,000,000) of said bonds shall be retained by the trustee for the purpose of acquiring from time to time, by purchase or otherwise, the outstanding car trust obligations or securities (whether in the form of lease warrants issued under car trust leases, or contracts or certificates, obligations, or securities secured or based upon the railroad equipment and rolling stock therein described), secured upon or based on railroad equipment and rolling stock used by the railroad company, and referred to and described in the car trust leases and contracts hereinbefore referred to, copies of which car trust leases and contracts have been contemporaneously herewith deposited with the trustee; and,

WHEREAS, the said railroad equipment and rolling stock covered by the said leases and contracts amounts at its original cost to \$2,000,000, and the lease warrants still outstanding and not yet fully paid amount to \$2,000,000, as will more fully and in detail appear by reference to schedules A, B, C1, and C2, hereto annexed and made part hereof; and,

WHEREAS, it is intended that the trustee shall, as herein provided, purchase or acquire such outstanding lease warrants issued by the railroad company under said car trust leases and contracts, but that the trustee shall not be authorized to pay on such purchase or acquiring of said \$2,000,000, of outstanding lease warrants, more than the said \$1,000,000 of the bonds or proceeds of bonds issued hereunder and retained by the trustee for that purpose, and that the balance required for such purchase or acquiring shall be furnished by the railroad company, and that the said \$1,000,000 of bonds or proceeds of bonds issued hereunder and retained by the trustee for that purpose shall only be applied for such purchase or acquiring in the respective amounts for the several lease warrants shown in detail in Schedules C1 and C2, hereto annexed and made part hereof, and that the further sum or sums, if any, required to purchase or acquire such lease warrants shall be furnished to the trustee by the railroad company;

NOW, THEREFORE, the B. & C. Railroad Company, for itself, its successors, and assigns, doth hereby covenant and agree, with the trustee, and with the respective persons and bodies corporate who may at any time be or become holders of the bonds and coupons hereby secured:

1. That one million dollars (\$1,000,000) of said bonds shall be reserved and held by the trustee to be used in acquiring, by exchange, purchase, or otherwise, the said lease warrants, car trust certificates, obligations, or securities secured or based upon said railroad equipment and rolling stock used by the railroad company and hereinbefore referred to, and that none of the said bonds or their proceeds shall be used or employed for any other purpose except as hereinafter provided; that all of said \$1,000,000 of bonds, or their proceeds, having been deposited with the trustee, shall be held by it as the custodian of the same until required to be used from time to time for the purposes herein mentioned, when, upon the proper certificate or voucher of the president of the railroad company, the said bonds, or their proceeds, shall, from time to time as required, be delivered to the railroad company, or to whomsoever it may direct, upon there being deposited with the trustee the lease warrants, car trust certificates, obligations, or securities acquired in the amounts and as herein provided; that the said bonds may, from time to time, upon the proper certificate or voucher of the president of the railroad company, as aforesaid, be sold for cash or exchanged for such lease warrants, car trust certificates, obligations, or securities; that the cash proceeds shall be employed from time to time, and at any time hereafter, in acquiring, by purchase, exchange, or otherwise, the said car trust obligations or securities now outstanding, and upon such terms and in such manner as shall be prescribed in such certificate or voucher of the president of the railroad company, **PROVIDED, HOWEVER**, that whenever and as the trustee is so required to purchase or acquire any of the outstanding lease warrants hereinbefore referred to, the trustee shall pay towards such purchase or acquiring, out of bonds secured hereby, or the proceeds thereof, the amounts, and only the several amounts, shown on Schedules C1 and C2 to be applicable to such payment, and the railroad company shall furnish to or deposit with the trustee such further amount of money or other consideration in excess of the amount named and provided as payable by the trustee out of bonds or proceeds of bonds for that purchase in the said Schedules C1 and C2, hereto annexed, as shall be required for such purchase or acquiring; **PROVIDED ALSO, HOWEVER**, that with the said bonds or proceeds thereof, the trustee shall, from time to time, when and as required so to do by such certificate or voucher of said president of the railroad company, acquire by purchase, or otherwise, at any price not exceeding the par thereof and accrued interest, the said car trust certificates, obligations, or securities issued by any corporation upon the security or basis of any of said car trust leases or contracts, or upon any of the lease warrants issued thereunder, but such certificate or voucher shall be accompanied by the certificate of the president or treasurer of the railroad company, or by other certificate or evidence satisfactory to the trustee, that after the purchase or acquiring by the trustee so referred to in such certificate or voucher is made, there will remain in the hands of the trustee of the said amount of \$1,000,000 of the bonds secured hereby (estimating the cash value of bonds so retained at 90 per cent. of their par value), and of the unused cash proceeds of such of said \$1,000,000 of bonds as may have been sold for cash, taken together, an amount

which shall be at least equal to the remainder of the "unpaid principal of car trusts," shown in Schedules C¹ and C², after deducting therefrom the proper portion of "unpaid principal of car trusts," represented by car trust certificates, obligations, or securities of any such corporations so purchased or acquired by the trustee and included in the lease warrants securing the same; the car trust certificates, obligations, or securities of such corporations so acquired, or if paid off, their proceeds, in the hands of the trustee, shall be used by the trustee under the certificate or voucher of the president of the railroad company, and in such manner as may be approved by the trustee, and in accordance with Schedules C¹ and C², hereto annexed, in purchasing or acquiring any lease warrants or other car trust certificates, obligations, or securities then outstanding under said car trust leases or contracts.

IT IS DISTINCTLY UNDERSTOOD AND AGREED, HOWEVER: That so long as any of the lease warrants or car trust certificates, obligations, or securities remain unacquired by the trustee, the trustee shall retain of the said \$1,000,000 bonds (estimating the cash value of bonds so retained at 90 per cent. of their par value) and of the unused cash proceeds of such of them as may have been sold for cash, taken together, an amount which shall be at least equal to the remainder of the "unpaid principal of car trusts," in the then outstanding lease warrants, or the amount necessary, under Schedules C¹ and C² (after deducting therefrom the proper portion of "unpaid principal of car trusts," represented by car trust certificates, obligations, or securities of any corporations purchased or acquired by the trustee), to be applied out of the said bonds or their proceeds for the purchase or acquirement of the lease warrants, car trust certificates, obligations, or securities at such time remaining unacquired.

2. When and as such lease warrants, car trust certificates, obligations, or securities are purchased and acquired as aforesaid by the trustee for the purposes hereof, the same shall be marked or stamped as follows: "This has been purchased and acquired by the Trust Company of New York, trustee, in accordance with and for the purposes of the deed of trust or mortgage from the B. & C. Railroad Company to the Trust Company of New York, trustee, dated , , and shall be held, transferred, or canceled only in accordance therewith."

3. All of said lease warrants, car trust certificates, obligations, or securities that may be purchased or acquired by the trustee as hereinbefore provided, shall be deposited with the trustee, and be held by the trustee in its name and ownership for the full amounts thereof, with all the powers, obligations, estate and interest, liens, rights, and remedies incident thereto undisturbed, as additional security for the bonds intended to be hereby secured, and shall be by the trustee retained, for all the purposes of, and subject to, all the terms and conditions of this deed of trust or mortgage, except as herein otherwise provided, until all the bonds issued hereunder are fully paid and discharged.

4. When and as lease warrants, car trust certificates, obligations, or securities are purchased or acquired by the trustee under the operation and for the purposes hereof, and at any time or times during the existence of the trust hereby created, the time for the payment of the obligation of the railroad company thereon shall thereby without any further act or deed be extended until the 1st day of , or the earlier maturity of the principal amount

of all the bonds secured hereby by reason of the default of the railroad company under any of the provisions hereof, but the trustee shall and will, upon the proper voucher or certificate of the president of the railroad company, and in such manner as shall be approved by the trustee or its counsel learned in the law, by such further act or deed that may be deemed advisable or necessary, extend or arrange for the extension of the time for payment of the obligations of the railroad company thereon until the 1st day of , 19 , or the earlier maturity of the principal amount of all the bonds secured hereby by reason of the default of the railroad company under any of the provisions hereof.

5. All the costs, charges, and legal or other expenses necessary or incident to the acquiring or purchase by the trustee of any of the herein mentioned lease warrants, car trust certificates, obligations, or securities, or the instruments under which they or any of them shall have been issued, shall be paid by the railroad company upon demand, and in case of failure of the railroad company to pay upon such demand any and all sums thus due, then such amounts shall, at the option of the said trustee, be added to the principal amount due under this mortgage or deed of trust, and the trustee shall be entitled to all the rights, liens, and remedies thereupon that are granted to it hereunder, and which are incident to the amounts due and payable upon the bonds secured hereby.

6. If after all of said lease warrants, car trust certificates, obligations, and securities now outstanding shall have been so acquired by the trustee, any surplus of the said \$1,000,000 of bonds shall remain unissued, or any surplus of the proceeds of any of the said bonds which have been sold shall remain in the hands of the trustee, such surplus shall be used for the purchase of additional railroad equipment and rolling stock in the same manner and for the same purposes as are set forth in the second article hereof in relation to the \$4,000,000 of bonds, or the proceeds thereof, as therein mentioned, or if at any time while any of said \$1,000,000 of bonds remain in the hands of the trustee a surplus should exist of such bonds or their proceeds in excess of the amount required to provide for "unpaid principal of car trust," such surplus may at the option of the railroad company be used for the purchasing and furnishing additional railroad equipment and rolling stock in the same manner and for the same purposes as herein provided in relation to said \$4,000,000 of bonds or proceeds thereof.

7. It is distinctly understood and agreed, however, that in case of default of the railroad company to pay the principal or interest of the bonds secured hereby, or any of the sinking fund or other payments provided for herein, or in case proceedings of any kind shall be commenced against the railroad company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage, or in case the railroad company shall make default in any of the payments required to be made under any of its car trust leases, contracts, or obligations, or in case of the institution of any proceedings either at law or in equity whereby the control or ownership of its railroad equipment and rolling stock, railroad property, or franchise, or any part thereof, may be affected or disturbed, then and in either of such events the trustee shall at its option be relieved from all obligation to take up, acquire, or purchase any of the said lease warrants, car trust certificates, obligations, or securities.

8. Until all the payments provided for in this deed of trust or mortgage and in the bonds intended to be secured hereby shall have been fully and completely made by the railroad company, and all the covenants and agreements on its part hereunder and under the said car trust leases and contracts or obligations hereinbefore referred to shall have been kept and performed, the title to the railroad equipment and rolling stock therein referred to shall not pass to or vest in the railroad company, and no right whatever thereto or to any part thereof shall pass to the railroad company except that of using the same, as therein and herein provided, and this indenture and the terms and requirements thereof shall in no manner affect or prejudice the right, title, or interest of the lessors in such contracts, or of persons or corporations claiming under them, in and to the said railroad equipment and rolling stock, or relieve the railroad company of or from any liability, or of or from the performance of any of the covenants or agreements in or under the said car trust leases and contracts or obligations.

9. In case the railroad company shall make default in the payment of the principal or interest of the bonds secured hereby or any of the sinking fund or other payments provided for herein, or in case proceedings of any kind shall be commenced against the railroad company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage, or in case the said railroad company shall make default in the payment of any of the amounts required to be made under car trust leases, contracts, or obligations, or in case of the institution of any proceedings either at law or in equity whereby the control or ownership of its railroad equipment and rolling stock, railroad property, or franchises, or any part thereof, may be affected or disturbed, and said trustee shall decline to continue to further take up, acquire, or purchase the said lease warrants, car trust certificates, obligations, or securities, as in that case it has the right to do under the preceding seventh paragraph of this article, then and in either and every such event the said lease warrants, car trust certificates, obligations, or securities then already taken up, acquired, or purchased, and deposited with the trustee may be sold at public sale in such amounts, on such notice, and at such times as the trustee may determine, and the proceeds thereof applied to the payment of the bonds intended to be secured hereby, as hereinafter provided.

10. In case of default of the railroad company to pay the principal or interest of the bonds secured hereby, or any of the sinking fund or other payments provided for herein, or in case proceedings of any kind shall be commenced against the railroad company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage, or in case the railroad company shall make default in any of the payments required to be made under any of its car trust leases, contracts, or obligations, or in case of the institution of any proceedings, either at law or in equity, whereby the control or ownership of its railroad equipment and rolling stock, railroad property, or franchises, or any part thereof, may be affected or disturbed, then and in either and every such event the trustee may, at its option, do each and everything that the former holders of such lease warrants, car trust certificates, obligations, or securities would have had a right to do in case there had been a default thereunder, and by lien or otherwise enforce or require the enforcement of any or all of the said lease warrants, car trust certificates, obligations, or securities taken up, acquired, or purchased by it in accordance with the terms of the contract or contracts under which the same were issued or given.

Fourth. Until the payment of all the bonds secured hereby, the railroad company shall and will pay unto and deposit with the trustee a sum of money equal to 3 per centum per annum upon all the bonds countersigned and delivered by the trustee hereunder, as and for a sinking fund to be applied by the trustee in a manner to be approved by the railroad company, to the purchase of bonds secured hereby at the lowest price obtainable not exceeding par and accrued interest; such sinking fund payments or deposits to be made semi-annually, on the 1st day of and in each year (the first to be made on the 1st day of ,), and each such semi-annual payment to be equal to $1\frac{1}{2}$ per centum upon the total amount of bonds at par countersigned and delivered to that date by the trustee. If during the period ending the 1st day of , , none of the bonds secured hereby can be purchased at a price not exceeding par and accrued interest, the money in the sinking fund shall be applied by the trustee under the direction of the railroad company to the purchase of or investment in any of the bonds secured by deeds of trust or mortgages existing at the date hereof on property of the railroad company. When and as divisional mortgage bonds on the property of the railroad company are acquired by the trustee as last hereinbefore provided, and the maturity thereof is at a date prior to , , then the trustee shall, if requested so to do by the railroad company, extend the payment of the principal amounts thereof until said 1st day of , , and at a rate of interest not exceeding five per cent. per annum, payable semi-annually, and not less than the lowest rate paid on other divisional bonds of the same class of the railroad company that may have been extended to the same date. All of the interest received by the trustee upon any of the bonds secured by existing deeds of trust or mortgages on property of the railroad company so to be purchased or acquired by the trustee shall be held by it as a part of the sinking fund under this mortgage or deed of trust, and together with any other income, interest, or proceeds of said sinking fund shall be applied as herein stated. On and after the 1st day of , , if the trustee shall at that date have in the sinking fund any of the mortgage bonds on property of the railroad company, the trustee shall within four months thereafter, in a manner to be approved by the railroad company, dispose of the same and apply the proceeds with any other accumulations in the sinking fund to the purchase of bonds secured hereby at the lowest price obtainable, not exceeding par and accrued interest: PROVIDED, HOWEVER, that should the trustee hold in the sinking fund on and after the 1st day of , , any of the divisional mortgage bonds on property of the company, the trustee shall, if requested so to do by the railroad company, hold the same for a period not beyond the 1st day of , , before applying them to compulsory drawings of the bonds issued hereunder as herein provided. If none of the bonds issued hereunder are, on or after the 1st day of , , obtainable at or below par and accrued interest, then the trustee shall apply the amount then in such sinking fund to the compulsory drawing by lot of bonds secured hereby and then outstanding, and shall proceed to draw by lot such bonds as are to be so paid by the sinking fund, at such time and place as it shall designate for that purpose, first giving notice to the railroad company of the drawing and the time and place thereof, and after such drawing shall take place, the trustee shall give notice of the bonds which have been so drawn and of the time and place for the presentation and payment thereof, which

shall be not less than ninety days from the date of such drawing, said notice to be by advertisement in one newspaper in the city of New York, and one in the city of _____, and in such other newspapers elsewhere as the trustee may direct, once a week for four weeks, and by posting up a list thereof in the office of the trustee, in the city of New York, and in such other place as may be designated by the railroad company, and after the time so fixed for the presentation and payment thereof all interest shall cease on the bonds so drawn; and upon such presentation and surrender, the bonds so drawn shall be paid by the said trustee out of the sinking fund to the holders thereof at par and accrued interest to the date so fixed for presentation and payment.

The drawing of bonds for redemption by the sinking fund herein shall take place semi-annually after the 1st day of _____, _____, and when practicable at such time that the date for the presentation and payment of the bonds so drawn shall be on an interest payment date, either the 1st day of _____ or _____, and the drawing shall be conducted in the manner following, viz.: The trustee shall cause to be prepared cards of equal size, containing the numbers of all outstanding bonds, one number on each card, and a drawing by lot shall then be made in presence of a notary public until the requisite amount of bonds shall have been drawn; the result of which drawing shall be certified under his seal by said notary, describing by numbers the bonds so drawn, and a copy of such certificate of drawing shall thereupon, be delivered to said trustee, and a copy to the president or treasurer of the railroad company.

All bonds secured hereby and purchased or redeemed by operation of the sinking fund, shall without unreasonable delay be canceled by the trustee, and the debt of the railroad company shall to that extent be extinguished.

Fifth. Upon call by the railroad company, on the 1st day of _____, _____, or from time to time, and at any time thereafter, any or all of the bonds hereby secured are liable to be redeemed at par with accrued interest, notice thereof being given by advertisement published once a week for ninety days in a newspaper published in each of the cities of New York and _____, and in such other newspapers elsewhere as the trustee may direct, stating the numbers of the bonds so called for redemption, and the time and place for the presentation and surrender thereof for redemption, which time shall not be less than ninety days from date of beginning of such publication, and after the date so fixed for presentation and surrender all interest shall cease on the bonds so called, and the bonds so redeemed shall be forthwith canceled by the trustee, and the debt of the railroad company shall to that extent be extinguished.

The drawing of the bonds so to be redeemed shall be conducted by the trustee, and when practicable shall take place at such time that the date for the presentation and payment of the bonds so drawn shall be on an interest payment date, either on the 1st of _____ or _____, and the bonds so to be redeemed shall be ascertained by a drawing in the manner following, viz.: The trustee shall cause to be prepared cards of equal size, containing the numbers of all outstanding bonds, one number on each card, and a drawing by lot shall then be made in presence of a notary public until the requisite amount of bonds shall have been drawn; the result of which drawing shall be certified under his seal by said notary, describing by numbers the bonds so drawn, and a copy of such certificate of drawing shall thereupon be delivered

to said trustee and a copy to the president or treasurer of the railroad company.

Sixth. Until default shall be made by the railroad company in the payment of the principal or interest of the bonds secured hereby, or any of them, or of the said semi-annual sinking fund payments or other payments provided for herein, and on the days and times provided in said bonds or herein respectively, without further delay, and without deduction from either principal or interest for any tax or taxes which the railroad company may be required to pay or retain therefrom, by any present or future laws of the United States, or any of the states thereof, or of any local division thereof, the railroad company having agreed and hereby agreeing to pay the same, or until proceedings of any kind shall be commenced against the railroad company for the appointment of a receiver or for the foreclosure of any deed of trust or mortgage, or until the railroad company shall make default in any of the payments required to be made under any of its car trust leases, contracts, or obligations, or until the institution of any proceedings either at law or in equity whereby the control or ownership of its railroad equipment or rolling stock, railroad property and franchises, or any part thereof, may be affected or disturbed, or until default shall be made by the railroad company in respect to some act or thing, covenant, or agreement in any of said bonds or herein required to be done, kept, and performed, the railroad company shall be permitted to remain in possession, use, and enjoyment of the railroad equipment and rolling stock herein mentioned and described, and so furnished or to be furnished to it by the trustee, as herein provided.

Seventh. The railroad company shall and will, at its own proper cost and expense, keep and maintain the said railroad equipment and rolling stock so furnished and to be furnished to it by the trustee, as herein provided, in good order and repair, and shall and will at once replace at its own cost any of the same that may be destroyed from any cause whatever, during the continuance of this trust, by or with other like railroad equipment and rolling stock of equal value and material, character, and construction, or by or with such other rolling stock and equipment of different character, but of equal value, as may be approved of in writing by the trustee, and in the latter event the railroad company shall file with the trustee a statement in detail of the former railroad equipment and rolling stock, and of the railroad equipment and rolling stock so provided in replacement thereof; and the railroad company shall and will make all repairs, maintenance, and replacements to the satisfaction of any competent inspector who may from time to time be selected by the trustee to examine the same, and shall and will mark, or cause to be marked, on each side of each and every article of rolling stock and equipment acquired by the trustee for the purposes hereof, the words, "owned by the Trust Company of New York, trustee, B. & C. Railroad, equipment mortgage," and the proper number; and will not allow the name or designation of any other company as owner to be placed on any such railroad equipment and rolling stock. In the event of any such marks being destroyed, the railroad company will immediately restore the same, and will do such other acts as the trustee shall require for the full and complete protection of its rights hereunder.

And the railroad company shall and will pay, satisfy, and discharge all assessments, taxes, and charges, whether state, municipal, or otherwise, that

shall or may be lawfully assessed, charged, or imposed upon this mortgage, or upon the payments and obligations intended to be secured hereby, and upon the railroad equipment or rolling stock so furnished or to be furnished to it by the trustee, as herein provided.

The railroad company shall and will insure the said railroad equipment and rolling stock so furnished or to be furnished to it by the trustee, as herein provided, for the benefit of the trustee, for such amounts as other similar railroad equipment and rolling stock are insured by the railroad company, and shall keep the said railroad equipment and rolling stock so insured until the bonds hereby secured are fully paid, and shall deposit the policies of insurance or certificates thereof with the trustee; in default whereof the trustee may at its option cause insurance to be effected in such companies and in such manner as it may from time to time think best, and the railroad company shall and will on demand pay the premiums for such insurance, and such other expenses as may be incident thereto, and the trustee may also at its option require the railroad company to replace in solvent insurance companies any insurance placed by the railroad company in insurance companies whose standing may then or thereafter be impaired.

The railroad company shall and will through its general manager, or other proper officer or agent, furnished to the said trustee, half-yearly, during the months of and , in each year, during the continuance of this trust, or oftener, if required by the said trustee, a statement of the condition, location, and use of said railroad equipment and rolling stock so furnished, or to be furnished to it by the trustee, as herein provided, the number and description of all that may have been destroyed and substituted during the year preceding, and also the number then awaiting or undergoing repairs in the shops of the railroad company, or elsewhere; and the said trustee shall have the right to inspect the said equipment and rolling stock once in every year, or oftener, during the continuance of this trust, by any person to be appointed by the said trustee, and such person or agent shall be furnished with the necessary authority to travel without charge over the railroads wherever the same may be for the purpose of making such inspection.

Eighth. If the railroad company shall at any time hereafter make default, or refuse, neglect, or omit for any period exceeding ninety days, to pay said bonds as they mature, or to pay the interest on said bonds intended to be hereby secured, or any of them, or shall fail to pay the semi-annual sinking fund payments, or other payments provided for herein, or shall refuse or fail to keep or perform any of the covenants or stipulations contained herein, or in the said bonds secured or intended to be secured hereby, or on its part to be kept or performed, or in case proceedings of any kind shall be commenced against the railroad company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage, or in case the railroad company shall make default in any of the payments required to be made under any of its car trust leases, contracts, or obligations, or in case of the institution of any proceedings either at law or in equity whereby the control or ownership of its railroad equipment or rolling stock, railroad property, or franchises, or any part thereof, may be affected or disturbed, then and in either of such events the trustee shall and will, upon written request of the holders of [one-fourth] in amount of the bonds secured hereby and then outstanding, and upon adequate security and indemnity against all costs, ex-

penses, and liabilities to be by it incurred, or without such request or security or indemnity, it shall be lawful for the trustee, at its own discretion, forthwith to demand, and with such force as may be necessary, enter upon the premises and railroad of the railroad company, or of any other person or corporation where the said railroad equipment and rolling stock so furnished or to be furnished to the railroad company, as herein provided, or any of it, may be, and take immediate and maintain exclusive possession of all and singular the said railroad equipment and rolling stock so furnished or to be furnished to the railroad company by the trustee, as herein provided, and any which may be substituted therefor, and as the attorney in fact or agent of the railroad company, by its agents and substitutes duly constituted, have, hold, use, manage, operate, lease, and enjoy the same to as full an extent as the railroad company might lawfully do, making from time to time all proper repairs, and paying insurance, taxes, and other necessary expenses connected therewith, and shall take and receive the income, rentals, and profits thereof, and the trustee shall likewise proceed, in its own discretion, with or without the order or decree of any court of equity or other competent court having jurisdiction in the premises, and as by the trustee may be determined or by said court may be ordered or decreed, to sell and dispose of to the highest and best bidder or bidders at public auction, in such lots or amounts, on such notice, and at such times and at such places as the trustee or court may authorize, and to adjourn said sale or sales from time to time, in its discretion, and if so adjourning to make such sale or sales at the times and places to which the same may be so adjourned, any and all of said railroad equipment and rolling stock, and also in like manner and on like terms and conditions to sell and dispose of any and all of the lease warrants, car trust certificates, obligations, or securities purchased or acquired by the trustee as hereinbefore provided for the purposes hereof, and thereupon to transfer, deliver, and convey the same to the purchaser or purchasers thereof, by good and sufficient deed or deeds for the same, free from any right or claim of equity of redemption of the railroad company, its successors or assigns, and freed from all the trusts hereby created, without liability to see to the application of the purchase money, and without obligation to inquire into the necessity, expediency, or authority of any such sale (which sale shall be a perpetual bar, both in law and equity, against the railroad company, and all persons claiming under it), and after deducting from the net proceeds realized by means of such use and occupation, and from such sale, or from either, all proper costs, charges, and disbursements incurred in and about the premises, including attorney and counsel fees, and all other expenses, advances, or liabilities, which may have been made by it for repairs, insurance, taxes, or assessments, as well as reasonable compensation for its own services, the trustee shall apply the balance of such net proceeds to or towards the payment or discharge, with *pro rata* equality, of the principal and interest at such time owing and unpaid of and upon the said bonds hereby secured, whether the same be then due or to become due, and without preference of principal over interest, or of interest over principal, rendering or paying any surplus which may then remain after the full satisfaction of the principal of the said bonds, and every of them, and the interest thereon, to the railroad company, its successors or assigns; or the trustee shall and will, upon the written request of holders of [one-fourth]

in amount of said bonds then outstanding, and upon like security and indemnity, or without such request or security or indemnity, in its own discretion, the trustee may, in its own name or otherwise, proceed to protect and enforce the rights of the bondholders secured hereby by a suit or suits in equity or at law, whether for the specific performance of the stipulated covenants and agreements, or any of them, contained herein or in any of the lease warrants, car trust certificates, securities or obligations so purchased or acquired, or to be purchased or acquired by the trustee hereunder as herein provided on the part of the railroad company to be kept and performed, whether in aid of the execution of powers herein granted, whether by the enforcement of any lien or right of lien, or otherwise, as the trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce such rights; it being understood, and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies additional to all other rights, liens, or remedies allowed by law, and that the same shall not be deemed in any manner whatever to deprive the trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof, or to waive or affect the right of the trustee to any lien or right of lien which otherwise may be vested in it or the bondholders secured hereby: PROVIDED ALWAYS, and it is hereby expressly declared and agreed, that no holder or holders of a bond or of any bonds secured hereby, shall have the right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or the execution of any of the trusts thereof, or for the appointment of a receiver, or for any other remedy hereunder, without first giving notice in writing to the trustee of default having occurred or continued as aforesaid, nor unless [one-fourth] in amount of the holders of bonds hereby secured and then outstanding have made request in writing to the trustee as above provided, and have afforded it a reasonable opportunity to proceed to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding, in its own name, and have also offered to it adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared to be, at the option of the trustee, conditions precedent for the execution of the powers and trusts of this indenture, and to any action, or cause of action, for the foreclosure, or the appointment of a receiver, or for any other remedy hereunder: AND PROVIDED ALSO, that neither the trustee, nor the holder or holders of the bonds intended to be hereby secured, or any of them, shall sell the premises hereby mortgaged, or intended so to be, or any part thereof, or institute any suit, action, or procedure in law or equity, for the foreclosure hereof, or for the appointment of a receiver, or enforce any right, lien, or remedy hereby granted or reserved, otherwise than in the manner herein provided or allowed to the trustee.

Ninth. At any sale of the said railroad equipment and rolling stock and lease warrants, car trust certificates, obligations, and securities, and of either or any of them, or any part thereof, whether made by virtue of any power herein granted, or by judicial authority, the trustee may bid for and purchase the same or any of them, or cause the same or any of them to be bid for and purchased for and on behalf of all the holders of the bonds hereby se-

cured and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion thereof be sold, or if the whole of said mortgaged property should be sold, then at a price not exceeding the total amount of such bonds outstanding, with the interest accrued thereon and the expenses of such sale. In case of a sale of the herein mortgaged property, or any part thereof, either by the trustee or in the course of judicial proceedings as hereinbefore provided, the purchaser or purchasers at such sale, in making payment of the purchase money and making settlement thereof, after making a cash payment sufficient to cover the costs and expenses of the sale, and all other charges which must be provided for in actual cash, shall have the right to deliver and pay and turn in and use towards the payment of the purchase money, any of the bonds or coupons secured hereby and held by him or them, to or towards which the net proceeds of such sale shall be legally applicable, counting such bonds or coupons for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds or coupons as his or their just share of such net proceeds, after allowing for the proportion of payment that may be required in cash for the costs and expenses of the sale; and if such share of such net proceeds shall be less than the amount then due upon such bonds or coupons, to make settlement by receipting upon all such bonds or coupons the amount to be credited thereupon as aforesaid. And in the event of a purchase of said railroad equipment or rolling stock, lease warrants, car trust certificates, obligations, or securities, as aforesaid, by said trustee, the right and title thereto shall vest in said trustee, in trust for the purchasers, and each holder of bonds or coupons joining in said purchase and contributing his proportion of the cash expenses thereof, shall have an interest in the property so purchased, in the proportion that his bonds and coupons bear to the entire issue of bonds and coupons outstanding.

Tenth. In the event of the trustee making such entry and taking possession of the railroad equipment and rolling stock hereinbefore mentioned, or in event of any sale thereof, or of the lease warrants, car trust certificates, obligations, or securities, or any of them, by reason of any default as herein mentioned on the part of the railroad company, either by the trustee or by judicial proceedings, then, and in either such case, the whole principal sum of each and all of the said bonds then outstanding and intended to be hereby secured, and the full amount of all lease warrants, car trust certificates, obligations, and securities purchased or acquired by the trustee under the provisions hereof, shall forthwith become due and payable, anything in said bonds or in said lease warrants, car trust certificates, obligations, and securities or herein contained to the contrary notwithstanding, and notwithstanding the time limited in said bonds or the said lease warrants, car trust certificates, obligations, and securities or herein may not then have expired, and in no other case and for no other purpose shall the principal sum of any of said bonds hereby secured become due and payable before the date fixed in such bonds or herein for the payment thereof, except when redeemed for the purposes of the sinking fund or at the call of the railroad company, or except when the principal sum thereof has been declared to have become due and payable by the trustee, or by the holder or holders of a [majority] in amount of the bonds issued hereunder then outstanding, after default on the part of the railroad company under the foregoing provisions hereof, in

which event the holders of a [majority] in amount of the bonds then outstanding may instruct the trustee to declare the principal sum to be due, or waive, or instruct the trustee to waive, the right so to declare on such terms and conditions as such [majority] may deem proper, and may annul or reverse a previous declaration made by the trustee in that behalf: PROVIDED ALWAYS, and it is hereby declared, that no such action of the trustee or bondholders shall extend or be taken to affect any subsequent default or impair the rights resulting therefrom.

It is also understood and agreed that in case of any default hereunder on the part of the railroad company, as herein provided, that all the earnings of the said railroad equipment and rolling stock so furnished or to be furnished to the railroad company by the trustee, as herein provided, shall then and thereafter be and become payable to the trustee, and be applied by it as if received under the provisions of the eighth article hereof, and the railroad company agrees forthwith upon such default, and hereby authorizes and empowers the trustee to notify the Railroad Clearing House Association, or the railroad companies that at the time may be owing for the service or use of the said railroad equipment and rolling stock, to pay over such earnings to the said trustee. Such notice, however, shall not be necessary in order to enable the trustee to collect and receive such earnings in case of default.

Eleventh. The railroad company does hereby covenant with the trustee and its successors, for and on behalf of the bondholders entitled to the benefit of the security hereby provided or intended so to be, that the railroad company shall and will at any time, and at all times hereafter, upon reasonable request, make, do, execute, and deliver all such other and further reasonable assurances, acts, deeds, and things as in the opinion of competent counsel may be necessary or proper to effectuate the lien and security hereby intended to be created for the benefit of all such bondholders, and especially to hold and render subject to the lien of this mortgage any and all of the rolling stock or equipment which may have been or shall be furnished to it by the trustee, as provided herein, or which may have been provided or furnished in substitution for like railroad equipment or rolling stock injured or destroyed, and will not transfer possession of said railroad equipment and rolling stock to any other person or persons or corporations, except temporarily, according to the usual course of traffic, without the written consent of the trustee; and also the railroad company doth in like manner further covenant that in case possession of any of the railroad equipment or rolling stock so furnished or to be furnished to it by the trustee, as provided herein, shall in the course of traffic be transferred from the railroad company to any other person or persons, or corporations, such other persons or corporations, so long as any of such railroad equipment or rolling stock shall be in their possession, shall hold the same as bailees of the trustee and not of the railroad company, and shall be answerable to the trustee for the same, and the railroad company in any and all arrangements it shall make with such other persons or corporations shall act only as the agent of the trustee and not on its own behalf.

Twelfth. And it is hereby further covenanted and agreed, that in case the retaking of the railroad equipment and rolling stock hereby conveyed shall be made by the said trustee, or in the event that the said trustee shall demand

the possession of the same under any of the covenants contained in this deed of trust or mortgage, then the railroad company, and any railroad company or companies having the possession or use of the same from the railroad company, shall, without cost or charge to the said trustee, or to those beneficially interested in said trust, forthwith in the usual manner and at the usual speed of freight trains, draw the said railroad equipment and rolling stock to such point or points on the railroad where the same may be, as shall be reasonably designated by the said trustee, and that the trustee shall have the right, without expense to it, to keep and store the said railroad equipment and rolling stock upon any of the railways or premises of the railroad company until the same shall have been sold, as provided herein, and until a reasonable time for their removal has elapsed thereafter.

Thirteenth. And it is hereby further covenanted and agreed, and the trusts created by this instrument are accepted on the express condition that the trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the railroad company, or any railroad company or companies by lease, contract, or otherwise, under it, to retain or have possession and use of the said railroad equipment and rolling stock so furnished or to be furnished to the railroad company by the trustee, as herein provided. Nor shall the said trustee be or become responsible or liable for any destruction, deterioration, loss, injury, or damage which may be done or occur to any of the property hereby mortgaged or intended so to be; nor shall the trustee be liable or responsible for any matter or thing connected with the trust intended to be hereby created, except for its willful and intentional breach thereof; or any act, fault, or misconduct of any agent or persons employed by it, unless chargeable with culpable negligence in their selection, or in their continuance in employment; nor shall the trustee be answerable except for its own willful default or misconduct, or gross neglect; and in case the trustee shall go into possession of said mortgaged premises and operate the same, as hereinbefore provided, it shall be indemnified out of the funds and property which shall come into its hands as aforesaid for all claims and demands against it arising from negligence, carelessness, or misconduct of its officers, agents, or employees, and in all cases the trustee shall be authorized to pay such reasonable compensation as it may deem proper to all attorneys, servants, and agents whom it may reasonably employ in the management of the trust; and the trustee shall be entitled to and shall have just compensation for all services which it may render in connection with the trust, to be paid by the railroad company, or out of the trust estate; that the said trustee may resign from the trust, by notice in writing to the railroad company [and to all known bondholders], at least sixty days before such resignation shall take effect, or such shorter time as may be accepted as sufficient notice, and upon the execution and delivery, if such shall be required, of the necessary deeds of conveyance and transfer to its successor in the trust.

Fourteenth. It is understood and agreed, that the words "unpaid principal of car trusts," when, and as used in these presents, shall be construed to mean the amounts payable and applicable by the trustee, under and according to the provisions hereof and Schedules C¹ and C², hereto annexed, out of bonds hereby secured, or their proceeds to the purchase or acquirement of lease warrants, car trust certificates, obligations, or securities at such time

remaining unacquired by it; and also the words "lease warrants," when and as used in these presents, shall be construed to mean the lease warrants or other obligations for the payment of money given by the railroad company under any of its car trust leases or contracts hereinbefore referred to.

Fifteenth. The railroad company shall hereafter keep at its agency, in the city of _____, and at such place as may be required by the trustee, an appropriate book or books, for the purpose of registry and transfer of the bonds secured and to be secured hereby, in accordance with the terms of said bonds; and any and every holder of bonds secured hereby shall be entitled to have his name and address, and the number and denomination of any of the said bonds held by him, entered therein, upon presenting at the said office a written statement of the said particulars, signed by himself, and, if required, duly verifying his title to the said bonds by the production thereof, or upon written order, duly verified, of the person last registered as the holder. The trustee shall have free access at all reasonable hours and times to such bond registry, and shall from time to time, on request in writing, be furnished with a copy thereof.

The trustee and the railroad company shall keep separate registries of all bonds redeemed or designated for redemption, under the fourth and fifth articles hereof, and such registry of the company and of the trustee shall be at all reasonable times open to the inspection of each bondholder.

Sixteenth. If the railroad company shall well and truly pay the sums of money, principal and interest, and sinking fund payments, according to the terms and conditions hereof, and of the said bonds secured hereby, as the same shall mature and become due and payable, and all other amounts payable by it under the provisions hereof, which said sums the railroad company doth hereby covenant to pay as the same shall become due and payable, and shall well and truly keep and perform all the covenants, agreements, and undertakings herein and hereby assumed and required to be kept and performed according to the true intent and meaning of these premises, then and in that case the estate, right, title, and interest of the said trustee, or its successors, in and to the said mortgaged railroad equipment, and rolling stock, and lease warrants, car trust certificates, obligations, and securities, shall cease and determine and become void; and the said trustee shall, by a sufficient instrument in writing, if so thereto requested by the railroad company, execute a release of this deed of trust or mortgage whereby all the estates, title, right, and interest of the said trustee shall cease and determine; and the said trustee hereby accepts the trusts herein created, and covenants to execute the same: PROVIDED, HOWEVER, that the railroad company shall have the right to fix a time after the maturity of the bonds secured hereby, at which payment of all unpaid bonds will be made by it at its general office or agency in the city of _____, or elsewhere, and give notice thereof for a period of at least three months, by advertisement, published weekly, in one newspaper in the city of New York, and in one newspaper in the city of _____, and in such other newspapers elsewhere as the trustee may direct; and as to all such bonds as may not be presented for payment pursuant to such advertisement, the railroad company shall have the right, at its election, either to pay the amount of the principal and interest thereon to maturity, to the trustee herein for the time being, whereupon it shall be the duty of such trustee to enter satisfaction in full upon said mortgage, or

grant a release with like effect as though paid to the holders thereof at maturity, and retain the amount so paid by the railroad company for the benefit of the holders of such unrepresented bonds, or to require the trustee for the time being to enter satisfaction upon such mortgage or grant a release to the extent of the amount of bonds already paid and surrendered, allowing the mortgage to stand thereafter as security only to the extent of the unrepresented bonds, with interest thereon up to maturity, after which all interest shall cease and determine upon such unrepresented bonds.

[Here insert articles 27 to 31, inclusive, from Form No. 1320, and insert in their proper order any other clauses from that form that may seem desirable and be applicable to a mortgage of rolling stock.]

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be hereunto subscribed by their respective officers, duly authorized, and their respective corporate seals to be affixed, attested by their respective secretaries, on the day and year first above written.

B. & C. Railroad Company,

[SEAL OF RAILROAD COMPANY.]

By

President.

ATTEST:

Secretary.

The Trust Company of New York.

[SEAL OF TRUST COMPANY.]

By

President.

ATTEST:

Treasurer.

Sealed and delivered in the presence of

[Acknowledgment.]

[Here follow schedules, as follows]:

SCHEDULE A.

Abstract of car trust leases and contracts under which certain railroad equipment and rolling stock is being used by the B. & C. Railroad Company, which car trust leases and contracts are referred to in the foregoing equipment mortgage.

| Descriptive number of car trust. | CONTRACT MADE BY RAILROAD COMPANY. | | LESSOR'S OBLIGATION IS | | Remarks. |
|----------------------------------|------------------------------------|-------------------|--------------------------------|---|----------|
| | With (as lessor and contractor). | Date of contract. | To furnish equipment valued at | To purchase car trust lease warrants amounting to | |
| | | | | | |

SCHEDULE B.

Statement of total payments contracted to be made by the B. & C. Railroad Company, under its several car trust leases and contracts, described in the foregoing abstract (Schedule A), and referred to in the foregoing equipment mortgage.

| Descriptive number of car trust. | LESSOR'S OBLIGATION IN VALUE OF | | LESSEE'S OBLIGATIONS. | | GENERAL DESCRIPTION OF LEASE WARRANTS. | | | | | LEASE WARRANTS OUTSTANDING AS OF MAY 31, 188 . | | " Unpaid principals " represented in un-matured lease warrants. | |
|----------------------------------|---------------------------------|---------------------------------------|-----------------------|------------------------|--|-----------|-----------------|------------------|--------------------|--|----------|---|-----------|
| | Equip-ment fur-nished. | Car trust lease war-rants pur-chased. | Cash pay-ments. | Lease warrants issued. | Series | How many. | Amount of each. | Maturity period. | Maturity of first. | Maturity of last. | Matured. | | Unmatured |
| | | | | | | | | | | | | | |

SCHEDULE C2.

Statement showing, as of May 31, , the amounts and dates of maturity of outstanding lease warrants under certain car trust leases and contracts of the railroad company, described in the foregoing schedules A and B, as 3a, 3b, 3c, and 4, and referred to in the foregoing equipment mortgage, and how much thereof consists of "unpaid principal of car trusts," or the amount to be paid by the trustee of the equipment mortgage towards the purchase of each lease warrant by means of equipment mortgage bonds or proceeds thereof, in acquiring the same under the third provision of the said mortgage: — the balance required to enable the trustee to make the purchase to be furnished to the trustee by the railroad company.

| Date of maturity. | Modifications of 3a. | | | | 4. |
|-------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| | 3a. | 3b. | 3c. | | |
| | Total of lease warrants. | Total of lease warrants. | Total of lease warrants. | "Unpaid principal of car trust." | Total of lease warrants. |
| | "Unpaid principal of car trust." | "Unpaid principal of car trust." | "Unpaid principal of car trust." | "Unpaid principal of car trust." | "Unpaid principal of car trust." |

1325. Mortgage Securing Debentures.

THIS INDENTURE, made in duplicate, this day of , A. D. , by and between the Banking Company, of the city of , county of , and state of , hereinafter designated as the company, and the Trust Company, of the city and county of , in said state, hereinafter designated as the trustee, both of which companies are corporations severally organized under special charters granted by said state, WITNESSETH, as follows, to wit:

WHEREAS, the company intends to issue and sell its coupon bonds of different denominations, bearing different dates of issue and maturity, which said bonds and coupons are to be substantially of the form and tenor following:

UNITED STATES OF AMERICA.

No. . State of .

Series . § .
 THE BANKING COMPANY OF THE CITY OF .

FOR VALUE RECEIVED, the Banking Company, a corporation existing under a special charter granted by the state of , promises to pay at its office in the city of , and state of , to the bearer, or if this bond be registered, to the registered holder hereof only, the sum of dollars, on the 1st day of , with interest at the rate of per centum per annum, payable semi-annually on the surrender of the proper annexed coupon.

This bond is one of a series of bonds of like form and tenor issued by the Banking Company under and subject to the provisions of a certain agreement between the Banking Company, and the Trust Company, of , , as trustee, dated . And the Banking Company, in order to secure the payment hereof and of all other bonds of said series, has deposited with the Trust Company, as trustee and in trust for the benefit of the lawful holders of the bonds of said series, certain moneys, or notes, obligations, assignments, mortgages, or deeds of trust equal in amount to the bonds so issued, and such securities are guaranteed by the Banking Company to be valid and subsisting obligations and securities constituting first liens on real estate in the states and territories of the United States of America.

This bond may, at the option of the Banking Company, be called in and redeemed on the 1st day of , 19 , or at any time thereafter, provided that notice of at least six months prior to the date elected for redemption shall have been given by written or printed notice, mailed to the last registered holder hereof at his address, as shown by the books of the said the Banking Company, if he has caused this bond to be registered with the Banking Company, or by notice for three consecutive Saturdays in a daily newspaper published in New York city, if the holder hereof has not caused this bond to be so registered; which call made in either such manner shall operate to stop interest on this bond after the date named for redemption.

This bond shall not be valid or obligatory until the certificate indorsed hereon shall be signed by the trustee under the said agreement.

This bond may be registered in the name of the owner on the books of the company at its home office or at any other office designated by it for that purpose, which registration shall be noted hereon, after which no transfer

hereof shall be valid until registered as aforesaid; but after transfer to bearer and registry of such transfer, this bond shall be payable to bearer.

Dated at _____, in the state of _____, this _____ day of _____.

The _____
Banking Company.

[CORPORATE SEAL.]

ATTEST:

By _____
President.

Secretary.

(FIRST FORM OF COUPON.)

On the 1st day of _____, the _____ Banking Company promises to pay \$ _____ dollars at its office in _____, to bearer, being six months' interest on real estate first mortgage trustee bond No. _____, series _____.

President.

Secretary.

(FORM OF TRUSTEE'S CERTIFICATE.)

The _____ Trust Company of _____, hereby certifies that this bond is No. _____, of the above series, and that collateral equal to the aggregate amount of bonds certified to in said series has been deposited with it under the agreement of trust referred to in the said bond.

The _____
Trust Company,
By _____

President.

Secretary.

AND, WHEREAS, the company, for the purpose of securing the payment of the principal of said bonds and of interest thereon, and the performance of its agreement according to the terms of said bonds, and of the coupons thereto annexed, intends to deposit with the _____ Trust Company, certain moneys, notes, obligations, assignments, mortgages, or deeds of trust, as collateral thereto, and equal at par in amount to the face of the bonds to which they shall be collateral:

Now, THEREFORE, the parties hereto, for and in consideration of the premises, and of one dollar by each to the other in hand paid, the receipt whereof is hereby acknowledged, and other valuable considerations, do hereby agree and declare that the trusts, uses, purposes, conditions, and covenants for and upon which the collateral hereinbefore mentioned and described is deposited with and is to be held and disposed of by the said trustee, are as follows, that is to say:

First. The company has constituted, and does hereby constitute, said the _____ Trust Company the trustee of such collateral as shall be hereafter deposited by said company with the trustee, under the terms and conditions herein set forth, for the purpose of securing the payment of the bonds to be issued by it, principal and interest, as aforesaid; and does hereby covenant and guarantee to and with the trustee and the lawful holders of said bonds that such collateral, other than moneys, shall be valid and subsisting obligations and securities constituting first liens on real estate in the states and territories of the United States of America.

The collateral to be deposited with the trustee under this agreement shall be moneys, or notes, obligations, assignments, mortgages, and deeds of trust equal at par in amount to the face of the bonds certified hereunder, and said company shall assign to the trustee such collateral at the time of

such deposit; but until said company shall have made default in the payment of the principal of a bond in a series of bonds against which the collateral so assigned has been deposited, such of said interests or assignments as shall be subjects of record shall not be recorded by the trustee; PROVIDED, HOWEVER, that if the attention of the trustee shall at any time be called to the laws of any state or territory now or hereafter enacted, which shall require record of any assignment to be made within a limited time in order to make or keep such assignment effectual against said company, then such assignment may be recorded within the time so limited.

Second. Said bonds are to be issued in as many series as the company may elect; each series to be of such total amount and to bear such rate of interest as the company may at its convenience determine; each several bond of any series may be of such amount as the company may find convenient; each bond to become due at a date fixed upon the face thereof; but an option to pay on or after a date named upon the face of each bond, and before maturity, may be reserved by the company.

Third. The whole or any part of a series of bonds shall, on request of the company, be certified by the trustee and delivered to the company, upon its depositing with the trustee collateral to secure the bonds requested to be certified. Where the collateral securing the whole or any part of any series of bonds shall consist of notes or obligations and of mortgages or other instruments, relating thereto and required by law to be recorded, said bonds shall be certified and delivered to the company upon its depositing with the trustee the notes and obligations, and the delivery to the trustee of such mortgages or other instruments relating thereto may be delayed for the purpose of such recording for a reasonable time after the delivery of such notes and obligations.

Fourth. The collateral deposited under this agreement may bear any legal rate of interest, or may bear no interest; but collateral bearing no interest, except money, shall be estimated at 85 per centum of its face value. Any collateral deposited with the trustee by the company under this agreement may at any time be withdrawn by the company on its depositing with the trustee moneys or other collateral in substitution for and equal in amount to the collateral withdrawn; and all the provisions of this agreement shall apply as well to such substituted collateral as to collateral originally deposited.

Fifth. Whenever the company shall surrender to the trustee any bond issued under this agreement, the trustee shall deliver to the company such collateral as the company may select from the collateral deposited for the security of the series to which said bond belongs, equal in amount, as counted at the time of deposit, to such surrendered bond, and thereupon said bond shall be canceled by the trustee and returned to the company.

Sixth. The company shall at all reasonable times, in business hours, have the right to inspect the collateral deposited by it under this agreement with the trustee, and at all reasonable times in business hours the official examiner of any state or territory of the United States shall, upon the written permission of the company, have the right to inspect the collateral deposited with and held by the trustee under this agreement.

Seventh. Any bond issued and certified under this agreement may be registered in the name of the owner upon the books of the company at its home office, or at any other office designated by it for that purpose, and the fact of such registration shall at the time be indorsed upon the bond so

registered. Upon any bond being so registered it shall become and be an obligation of the company to, and valid and effectual in the hands of, the registered owner only; the owner of any registered bond may at any time transfer the ownership thereof, but such transfer shall not be effectual as a transfer of the obligation of the company until the said bond shall be registered in the name of the transferee; and upon and after any registration said bond shall become and be the obligation of the company to, and valid and effectual in the hands of, the last registered owner only, until transferred to bearer and registry of such transfer, after which it shall be payable to bearer.

In the event that notice shall at any time be given to the company that any bond certified and issued under this agreement and which shall be registered as hereinbefore provided, has been lost, stolen, or destroyed, the company may, upon proof satisfactory to it that such bond and the unpaid coupons thereof have been so lost, stolen, or destroyed, and upon receiving security satisfactory to it, pay the principal and accrued interest of said bond to the registered owner thereof, and upon such payment made shall be entitled to withdraw from deposit, and the trustee shall out of the collateral held by it for the series to which said bond belongs deliver to the company, securities equal in value to the face of said bond.

Eighth. Until the company shall make default in the payment of principal or interest of any bond in any particular series of bonds issued hereunder, the said company shall collect, receive, and disburse, under the direction of the board of directors, all interest of said mortgages and all amounts paid as a consideration for the extension of the time of payment of such mortgages or any of them of such series hereunder, and shall have the right to grant such extensions, and to pursue, in law or in equity, any remedy given by the terms of such collateral, and to enforce the payment of such collateral by appropriate proceedings at law or in equity; and until such default the company shall have the right to withdraw from the trustee any of the said mortgages, upon substituting in their place another mortgage or other mortgages of like nature and of equal par value, and in that case the trustee shall at the expense of the company assign to it the mortgage or mortgages so withdrawn.

The company shall also have the right at any time before such default, upon delivering to said trustee one or more of its said bonds, to withdraw from the trustee a mortgage or mortgages aggregating in par value the aggregate par value of the bonds so delivered, and the bonds so delivered shall be thereupon canceled by the trustee, and the mortgage or mortgages so withdrawn shall be assigned by the trustee to the company at the company's expense. If, before such default, any mortgage shall become due, and payable, whether by expiration of the time of the loan or by failure of the mortgagor to pay interest or taxes or otherwise, the trustee shall, upon the request of the company, deliver to the company, at the company's expense, for foreclosure or collection, the said mortgage and all papers and documents pertaining to the same, together with a proper assignment or satisfaction piece thereof; and the company shall proceed to collect or foreclose said mortgage, and shall deposit the proceeds with the trustee within [four months] of the time of the receipt thereof.

Ninth. If at any time the company shall make default in the payment of the principal or interest [of any series] of its said bonds, and such default shall con-

tinue for [sixty] days, the whole principal and interest of said bonds [of such series] shall thereupon become due and payable immediately, anything in said bonds or herein contained to the contrary notwithstanding; and the holder or holders of a majority of the bonds [of the series] so in default in the payment of principal or interest of said bonds, may thereupon notify the trustee of such default and of its continuance for [sixty] days, and request the trustee in writing to forthwith proceed to sell the said mortgages in its possession, and upon receiving such written notice and a satisfactory indemnity for the expenses to be incurred, the trustee shall sell all of the said mortgages [belonging to such series] then in its possession at public auction in the city of _____, upon a two weeks' notice, to be published twice in each week immediately preceding said sale in two newspapers published in the city of _____, and at least once in each of said weeks in a newspaper published in the city of _____, in the state of _____. Said notice of sale need not contain a description of each mortgage to be sold but may state simply the number of mortgages, and their aggregate amount, and that a particular description of each may be obtained at an address or addresses specified in said notice.

The trustee may give such further or additional notice of such sale as it may think desirable, but it need not give any further or other notice than that herein specified. The trustee shall sell the said mortgages [of such series] all together or in specified lots or singly, as the majority of bondholders [of such series] shall direct in writing, or if a majority of the bondholders [of such series] do not specify in writing any particular method of sale, the trustee shall have the right to determine whether the said mortgages shall be sold singly, or in lots, or as a whole. The proceeds of such sale shall be applied by the trustee as follows: First, to the payment of the expenses of said sale; second, to the payment of its reasonable counsel fees, in connection therewith; third, to its reasonable compensation as trustee for receiving and disbursing the proceeds of sale; and the balance of such proceeds shall then be paid to the holders of the bonds [of such series] ratably, and without preference or priority in favor of any bonds [of such series] as against any other bonds [of such series]; the surplus, if any, to be delivered to the company, its successors or assigns.

If the net proceeds of such sale shall not be sufficient to pay said principal and interest in full, then the same shall be paid *pro rata*.

Tenth. At any time after default has been made in the payment of the principal or interest of any of said bonds [of any series] hereunder, and has continued for [sixty] days, and no notice has been given by a majority of bondholders [of such series] as herein provided, the trustee may, in its discretion, though it shall not be under any legal obligation so to do, notify the company not to collect any further interest or principal on said mortgages or any of them, deposited as collateral [for said series] and may thereupon proceed in such manner as it may deem for the best interest of the bondholders [of such series] to collect such interest and principal, and to do such things as it may deem for the benefit of such bondholders, until a sale of said mortgages shall have taken place, and said mortgages shall have been paid for by, and transferred to, the purchaser or purchasers; and the trustee may, at any time, after a default by the company in the payment of interest or principal [of any series] of its bonds has continued for sixty days, and without a notice from the bondholders, sell the said mortgages in the manner

hereinbefore provided, but it shall not be under any legal obligation so to do without the notice and indemnification hereinbefore provided.

In case the trustee shall, after a default of said company, undertake the collection or foreclosure of any of said mortgages, it shall be entitled to retain from the proceeds of such collections or foreclosures, or from any other moneys belonging to this trust, the reasonable expenses of the same, including counsel fees and a reasonable compensation for its own services.

Eleventh. When the company shall have delivered to the trustee for cancellation all of its said bonds, or shall have deposited with the trustee sufficient moneys to pay all of its outstanding bonds, the trust hereunder shall cease, and the trustee shall, at the company's expense, assign and deliver to the company, all the mortgages and other property in its possession or under its control, belonging to the company.

Twelfth. The company shall have the right at any time to purchase its bonds at any price below par, or otherwise, and thereupon the bonds so purchased shall be canceled.

Thirteenth. The trustee shall pay to the bondholders, upon their application, all principal and interest deposited with it for them, and will do and perform all other acts and things necessary to be done by it under this agreement (except those provided for in articles ninth and tenth) and including the furnishing of vault space for the custody and safe-keeping of the securities of the company, for the sum of dollars a year for the first two years, and thereafter, if the amount of service to be rendered by the trustee shall be decreased by liquidation, for such less amount of compensation as may be mutually agreed upon.

Fourteenth. And it is further understood and agreed that if the amount of the mortgages and other securities is or at any time hereafter shall be in excess of the amount of the par value of the outstanding bonds of the company, then the company shall have a right to withdraw from the trustee any such excess of securities.

Fifteenth. The trustee accepts the trust hereby created and hereinbefore expressed, and covenants with the said company, and with the lawful holders of the bonds secured by this agreement, that it will faithfully discharge all the duties of said trust according to the terms of this agreement; but said trustee does not assume any risk or obligation as to the genuineness or value of any securities deposited with it as collateral under this agreement, and does not obligate itself to make any investigation as to the genuineness, or value, or the record or records of the same, and shall not in any case be liable for any act or omission, except for bad faith, in the execution of its trust.

IN WITNESS WHEREOF, the Banking Company, and the Trust Company, have executed this agreement in duplicate the day and year first above written.

[CORPORATE SEAL.]

ATTEST:

Secretary.

The Banking Company.

By

President.

[CORPORATE SEAL.]

ATTEST:

Secretary.

The Trust Company,

By

President.

1326. Form for Temporary Bond.

No. .

\$.

THE FIRST MORTGAGE TEMPORARY BOND OF THE BUILDING COMPANY.

The Building Company, a corporation existing under the laws of the state of , for value received hereby acknowledges itself indebted to the Trust Company of the city of , state of , as trustee, in the principal sum of six hundred thousand dollars (\$600,000) United States gold coin, and promises to pay the said sum, together with exchange on New York, or the equivalent thereof in Dutch money, at the rate of two and one-half ($2\frac{1}{2}$) guilders to the dollar, to the said trust company of the first day of April A. D. 19 , in gold coin of the United States of America of the present standard of weight and fineness, at the office of the agent of the said Building Company in the city of Amsterdam, Holland; and also, until the payment of the principal of said bond, to pay, in like gold coin, at the same place, and at the same rate of exchange in Dutch money aforesaid, interest on the aforesaid principal sum, on the first days of April and October in each year, at the rate of four and one-half ($4\frac{1}{2}$) per centum, per annum, without deduction from either principal or interest for any United States or state or other tax, whatsoever, which the Building Company is or may be required by law to retain therefrom and which it hereby agrees to pay.

This bond is secured by a first mortgage or deed of trust, bearing even date herewith made, executed and delivered by the Building Company to the Trust Company as trustee upon the freehold estate lots six (6) and seven (7) of Block Sixty-four (64) of the city of proper, and the twelve-story and basement, fireproof, granite and sandstone office building situated thereon together with the fixtures and appurtenances now or hereafter to be connected therewith, in the county of and state of , as more particularly described in said mortgage or deed of trust, to which reference is hereby made for the provisions thereof.

This bond is made, executed and delivered by the said Building Company to represent the indebtedness under said mortgage or deed of trust until the fifteen hundred (1,500) bonds or obligations of the Building Company for four hundred dollars (\$400) or one thousand (1,000) Dutch guilders, each, intended to be secured by said deed of trust or mortgage shall be engraved, executed and delivered, and this bond is entitled to the same rights, remedies, lien and security that under said deed of trust or mortgage appertain to the said fifteen hundred (1,500) bonds for four hundred dollars (\$400) or one thousand (1,000) Dutch guilders, each, when issued under the provisions of said deed of trust or mortgage; and this bond, until surrendered in exchange for a like amount of engraved bonds, shall represent the same indebtedness.

IN WITNESS WHEREOF, etc.

1327. Interim Bond Certificate.

No. .

\$.

BUILDING COMPANY.

TRUST COMPANY hereby certifies that or assigns is entitled to receive from it upon surrender of this certificate at the office of the Trust

Company, city, duly indorsed for cancellation, dollars (\$) first mortgage five per cent. gold bonds of the Building Company, bearing coupons due , 19 , and all subsequent coupons, so soon as the same are engraved and received by the Trust Company for delivery, and against which Trust Company now holds interim bonds for the like amount.

Dated, , 19 .

TRUST COMPANY,
By

President.

1328. Another Form of Interim or Temporary Bond.

UNITED STATES OF AMERICA,

State of

No. . \$.

First mortgage five per cent. interim gold bond of the Railroad Company. Total issue, \$.

FOR VALUE RECEIVED, the Railroad Company (hereinafter called the company) hereby acknowledges itself indebted to the bearer, or, if this bond be registered, to the registered owner hereof, in the principal sum of thousand dollars (\$), United States gold coin, and promises to pay the said sum at its office in the city of New York, on the day of , 19 , and also to pay interest thereon at the rate of five per cent. per annum, in like coin, at the same place, on the days of and in each year, until said principal sum shall be fully paid, and without deduction from either principal or interest for any tax or taxes which the company may be required to pay, or retain therefrom, under or by reason of any present or future law, and which it hereby agrees to pay.

This bond is an interim or temporary bond, representing bonds Nos. to , both numbers inclusive, of a series of bonds of the Railroad Company, amounting in the aggregate to the sum of dollars, numbered consecutively from 1 to , both inclusive, all of which bonds are equally secured by a mortgage or deed of trust bearing date the third day of March, 19 , and executed by the Railroad Company to the

Trust Company of New York city, New York, as trustee, of and upon all the property and franchises of the said company mentioned in said mortgage or deed of trust, subject to the terms and conditions of which mortgage this bond is issued and held.

This bond is redeemable at the option of the company, its successors or assigns, on and after 19 , on the conditions and in the manner provided in said mortgage.

This bond is entitled to the benefits of a sinking fund, to be maintained by the company and used as provided in said mortgage.

This bond shall not be valid or obligatory until the certificate indorsed hereon shall be signed by the trustee under said mortgage.

This bond may be registered in the manner and with the effect provided in said mortgage.

This interim or temporary bond is issued and certified under the provisions of article first of the said mortgage, and is exchangeable for or convertible into the coupon bonds to be issued under said mortgage as soon as the same shall have been engraved and printed, and this bond is entitled to the security of the said deed of trust or mortgage.

IN WITNESS WHEREOF, said Railroad Company has caused its corporate seal to be hereunto affixed and attested by its secretary, and these presents to be signed in its name by its president this day of A. D. 19 .

RAILROAD COMPANY,

By

President.

[SEAL.]

ATTEST:

Secretary.

[FORM OF TRUSTEE'S CERTIFICATE.]

The within bond is one of the interim bonds of the series and issue described in the mortgage therein mentioned.

TRUST COMPANY, *Trustee,*

By

President.

Temporary or interim bonds may be issued under trust mortgages, if provided for therein. In some cases one bond, for the whole amount to be issued, is made out to the trustee [*Form No. 1326*], which in turn issues its interim certificates to the persons entitled to the bonds [*Form No. 1327*]. In other instances, temporary or interim bonds are issued to the several persons entitled to them [*Form No. 1328*].

II. STATUTORY PROVISIONS AND FORMS, AND FORMS IN ORDINARY USE IN THE SEVERAL STATES.

ALABAMA.

1329. Mortgage to Secure Promissory Note.

KNOW ALL MEN BY THESE PRESENTS, that , for and in consideration of the sum of dollars, lawful money of the United States, to in hand paid by , at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, ha granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm, unto the said , heirs and assigns forever, all that, etc. [*here insert description*], together with all and singular

the tenements, hereditaments, rights, members, privileges, and appurtenances unto the above-mentioned and described premises, belonging or in anywise appertaining:

TO HAVE AND TO HOLD the above-granted and described premises, with the appurtenances, unto the said , and to heirs and assigns, and to sole and proper use, benefit, and behoof, forever; provided, always, and these presents are upon the express condition, that if the said shall well and truly pay to the said , the sum of dollars on demand, with interest, until paid, at the rate of per cent. per annum, payable semi-annually, according to the terms of promissory note of even date with these presents, made to the order of said , then these presents shall cease, determine, and be void; otherwise to remain in full force. And the said doth hereby vest the said , or assigns, with full power and authority, upon the happening of a default in the payment of the note above described, to sell all interest in said premises at public sale, for cash or on credit, giving days' notice in a newspaper published in , and the proceeds to apply, first to the payment of the amount due on the said note at the time of sale, and after, of the amount to become due, deducting legal interest and the costs of sale, and if there shall be a surplus, then the balance to be paid over to . And do authorize the said to conduct the sale and to make deed to the purchaser, and the title so made I hereby agree to defend against all persons.

Given under my hand and seal, etc.

[Signatures and seals.]

Signed and sealed in the presence of

1330. Real Estate Mortgage.

THE STATE OF ALABAMA, }
County. }

KNOW ALL MEN BY THESE PRESENTS, that, whereas, the undersigned , justly indebted to , in the sum of dollars, due by promissory note and, whereas, the said , desirous of securing the prompt payment of said note when same fall due: Now, therefore, in consideration of said indebtedness, and to secure the prompt payment of the same at maturity, , the said , ha bargained and sold, and do hereby grant, bargain, sell, and convey, unto the said , the following described real estate, situated in county and state of Alabama, to wit: [description] warranted free from all incumbrance and against any adverse claims.

TO HAVE AND TO HOLD the above granted premises unto the said , heirs and assigns, forever; and for the purpose of further securing the payment of said note , do hereby agree to pay all taxes or assessments when imposed legally upon said premises, and should make default in the payment of same, the said may, at option, pay off the same; and to further secure said indebtedness first above named agree to keep said property insured for at least dollars, loss, if any, payable to said , as interest may appear; and if fail to keep said property insured as above specified, then the said may,

at option, insure said property for said sum for own benefit, the policy, if collected, to be credited on said indebtedness, less cost of collecting same; all amounts so expended by said shall become a debt to , additional to the indebtedness hereby specially secured, and shall be covered by this mortgage, and bear interest from date of payment by said , and be due and payable at the maturity of

Upon condition, however, that if said pay said note and reimburse said for any amounts may have expended as taxes and insurance and interest thereon, then this conveyance is to be null and void; but should default be made in the payment of any sum expended by the said , or should said note , or any part thereof, or the interest thereon, remain unpaid at maturity, or should the interest of said , or assigns, in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events, the whole of said indebtedness shall at once become due and payable, and this mortgage be subject to foreclosure, as now provided by law in case of past due mortgages, and the said , agents or assigns, shall be authorized to take possession of the premises hereby conveyed, and after giving days' notice, by publication once a week for three successive weeks, of the time, place, and terms of sale, by publication in some newspaper published at , in said county and state, to sell the same in front of the courthouse door of said county, at public outcry, to the highest bidder, for cash, and apply the proceeds of said sale, first, to the expense of advertising, selling, and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or that may then be necessary to expend, in paying insurance, taxes, or other encumbrances, with interest thereon; third, to the payment of said note in full, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the said . And further agree that said , agents or assigns, may bid at said sale and purchase said property, if the highest bidder therefor; and further agree to pay a reasonable attorney's fee to said , or assigns for the foreclosure of this mortgage in chancery, should the same be so foreclosed, said fee to be a part of the debt hereby secured.

WITNESS hand and seal, this day of , 19 .

[Signatures and seals.]

Witnesses:

[Signatures.]

ARIZONA.

The form of a mortgage is the same as deed of conveyance, adding the following: "To be void upon condition that I pay," etc. Revised Statutes of 1901, § 734, subd. 4. [See also Form No. 873.]

1331. Realty Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that of the county of , territory of Arizona, mortgagor , for and in consideration of dollars, to in hand paid by , mortgagee , has granted, sold and conveyed, and by these presents do grant, sell and convey unto the said all

that certain premises described as follows, to wit: [*description*] To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said , mortgagee , heirs and assigns forever.

And the said for the consideration above expressed, do hereby renounce and release to said mortgagee all right and title or claim to dower in and to the above-described lands and premises.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note, in words and figures following, to wit: [*insert copy*]

And the said mortgagor agree and do hereby covenant to keep the building thereon insured, in favor of the mortgagee , in a good company, to be selected by the mortgagee in a sum not less than during the life of this mortgage, and in case said mortgagor fail to secure said insurance, the mortgagee hereby authorized to procure the same.

And this instrument shall be void if said promissory note, principal and interest, be well and truly paid when due, according to the tenor and effect thereof. But it is distinctly understood and agreed that if the interest on said promissory note, or the principal thereon, shall not be punctually paid when the same shall become due, as in said promissory note mentioned, then, and in such case, the principal sum of said note, and the interest thereon shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said mortgagee , heirs, executors, administrators and assigns, for the recovery of the same, either by suit on said note, or on this mortgage and note; and in any suit or other proceedings that may be had for the recovery of the said principal sum and interest thereon, it shall and may be lawful for the said mortgagee , heirs, executors, administrators or assigns, to include in the judgment that may be recovered, attorney's fees not exceeding per cent. thereon upon the amount found due the plaintiff on said note and this mortgage, or in case of settlement, after suit brought, but before judgment rendered, then per cent. on amount found due at the time of settlement, as well as all payments that the said mortgagee , heirs, executors, administrators or assigns may be obliged to make for security, or on account of any taxes, insurance, charges, encumbrances or assessments whatsoever on the said premises, legally laid or made thereon.

WITNESS hand this day of , A. D. 19 .

[*Signatures.*]

Signed, sealed and delivered in the presence of

[*Signatures.*]

1332. Crop Mortgage.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between , of county, state of Arizona, by occupation , mortgagor , and part of the first part, and , by occupation , mortgagee , and part of the second part, WITNESSETH, That the said mortgagor , for and in consideration of the sum of dollars, , to in hand paid, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey

unto the said part of the second part, and to heirs and assigns forever, the following growing crop, viz., the crop of , now being, standing and growing upon that certain piece or parcel of land, situate, lying and being in the said county of , state of Arizona, and particularly described as follows, viz.: [*description*]

TO HAVE AND TO HOLD the above-mentioned and described crop subject to the provisions hereinafter contained.

PROVIDED, NEVERTHELESS, and these presents are upon the express conditions, that if the said part of the first part, heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said part of the second part, executors, administrators or assigns, certain promissory note in the words and figures following, to wit: [*copy notes*] and also such other moneys as may be hereafter paid, loaned or advanced, and merchandise sold to, or for account of, said part of the first part, heirs, executors, administrators or assigns, by said part of the second part, heirs, executors, administrators or assigns, during the continuance of this mortgage, not to exceed in all the sum of dollars, exclusive of the sum mentioned in said promissory note, then these presents shall be void. And the said part of the first part do hereby covenant and agree to and with the said part of the second part, heirs, executors, administrators and assigns, that he will well and carefully tend, take care of, and protect the said crop while growing and until fit for harvest, and then faithfully and without delay, harvest, thresh, clean and sack the same, and deliver the same immediately into the possession of the said part of the second part, or assigns, to be by held and disposed of for the payment of the moneys hereby secured; that in default of either of the above acts to be done by the said part of the first part, the said part of the second part, or assigns, may enter upon the premises and take all necessary measure for the protection of said crop, and may retain possession thereof, harvest, thresh and sack the same; and all expenses so incurred, and all that may become necessary in the keeping and care of said crop, as well as the hauling, storing and delivery thereof, shall be secured by this mortgage, and shall be first payable, in United States gold coin, out of the money realized from the sale of said crop; that said part of the second part, or assigns, shall and may at all times enter in the premises to view the same, or to take any measure necessary for the protection of said crop or interest therein, and that upon harvesting thereof, shall be entitled to the immediate possession of the same, and may haul and store the same, at the expense of the said part of the first part, and do for the purpose aforesaid make, constitute and appoint the said part of the second part, and assigns, true and lawful attorney irrevocable, with full power to enter upon said premises and take possession of said crop, and take care of, protect, thresh, clean and sack the same, in case of any default on part of the covenants herein contained; and do further authorize or assigns to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time or times, and for such sum or sums of money as may deem proper, and for the best advantage of all concerned, and

out of the proceeds of said sale, first, to retain the costs and charges thereof, and any and all expenses by the part of the second part incurred in the care and protection, harvesting, hauling or storing the same, and commission for selling the same; second, to apply the residue to the payment of said note, and such other moneys as may have been paid, loaned or advanced, or merchandise sold as aforesaid, rendering the overplus, if any there be, to the said part of the first part, executors, administrators or assigns,

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

STATE OF ARIZONA, }
County of , } ss.:

, the mortgagor within named, and , the mortgagee within named, being first duly sworn, each for himself and not one for the other, does depose and say: That the foregoing mortgage is made in good faith, and without any design to hinder, delay or defraud any creditor or creditors.

[Signatures.]

Subscribed and sworn to before me,
this day of , 19 .

, Notary Public.

My commission expires .

ARKANSAS.

1333. Deed of Trust — Realty.

KNOW ALL MEN BY THESE PRESENTS, that , for and in consideration of the sum of one dollar in hand paid, and the premises hereinafter set forth, do hereby grant, bargain, sell and convey unto , and unto , heirs and assigns forever, the following real estate, situated in county, state of Arkansas, to wit: [description]

To HAVE AND TO HOLD the same unto the said , and unto heirs and assigns forever, with all appurtenances thereunto belonging.

And hereby covenant with the said that will forever warrant and defend the title to said lands against all lawful claims whatever.

And I, , wife of the said , for and in consideration of the said sum of money, do hereby release and relinquish unto the said all of my right of dower and homestead in and to the said lands.

To hold the same in trust, however, for the uses and purposes hereinafter expressed.

This sale is on condition that whereas justly indebted to in the sum of dollars, evidenced by , and have agreed to pay all taxes assessed against the said property, and to keep the premises insured in the sum of dollars for benefit of said .

Now, if shall pay said moneys at the times and in the manner aforesaid, and all taxes and insurance, then the above conveyance shall be null

and void, else to remain in full force. And in case of non-payment, then the said grantee shall have power to sell said property at public sale to the highest bidder for cash, at _____, in the _____, of _____, county of _____, and state of Arkansas, public notice of the time and place of said sale having been first given _____ days by advertising in some newspaper published in said county, by at least two insertions, or by notices posted in two public places in that county. And _____ authorize the said grantee to convey said property to anyone purchasing at said sale, and to convey an absolute title thereto, and the recitals of the deed of conveyance shall be taken as prima facie true. And the proceeds of said sale shall be applied first, to the payment of all costs and expenses attending the sale; second, to the payment of said debt and interest, taxes and insurance, and the remainder, if any, shall be paid to said grantor. And if at any time the trustee to whom this conveyance is made, shall refuse, or be incapacitated by sickness, absence, death, or any other cause, from carrying out the object of this trust, then said _____, or _____ assigns, shall have the right to appoint a trustee in his place by indorsement of such appointment on this deed; which substituted trustee shall have the same powers in every respect as are conceded to the grantee in this deed; and the indorsement aforesaid shall be prima facie evidence of the fact that a necessity has arisen for the appointment of such substituted trustee under the provisions of this deed.

_____ hereby waive any and all rights of appraisement, sale or redemption under the laws of Arkansas.

WITNESS, _____ hand and seal on this _____ day of _____, 19 _____.

[Signatures and seals.]

Plat as in Form No. 878.

1334. Mortgage, with Power of Sale — Realty.

KNOW ALL MEN BY THESE PRESENTS, that _____, for and in consideration of the sum of one dollar (\$1.00) to _____ in hand paid, and the premises hereinafter set forth, do hereby grant, bargain and sell unto _____, and unto _____ heirs and assigns forever, the following property: [description] _____ hereby covenant with the said _____, that _____ will forever warrant and defend the title to the said property against all lawful claims. And _____, wife of the said _____, for the consideration aforesaid, do hereby release unto the said _____ all right of dower and homestead in and to the said lands.

The sale is on the condition that whereas _____ justly indebted unto said _____ in the sum of _____ dollars (\$ _____), evidenced by _____,

Now, if _____ shall pay said moneys, at the times and in the manner aforesaid, then the above conveyance shall be null and void. And in case of non-payment, then the said grantee or assignee shall have power to sell said property at public sale, to the highest bidder, for cash, at _____, in the _____, of _____, county of _____, and state of Arkansas, public notice of the time and place of said sale having first been given _____ days by advertising in some newspaper published in said county, by at least two insertions, or by notices posted in ten public places in the county, at which sale the said

grantee or assignee may bid and purchase as any third person might do, hereby authorize the said grantee or assignee to convey said property to anyone purchasing at said sale, and to convey an absolute title thereto, and the recitals of his deed of conveyance shall be taken as prima facie true. And the proceeds of said sale shall be applied, first, to the payment of all costs and expenses attending said sale; second, to the payment of said debt and interest, and the remainder, if any, shall be paid to said grantor. We hereby waive any and all rights of appraisal or redemption under the laws of the state of Arkansas, and especially of redemption under the act of General Assembly of the state of Arkansas, approved May 8, 1899.

WITNESS, hand and seal on this day of , 19 .

[Signatures and seals.]

Plat as in Form No. 878.

CALIFORNIA.

1335. Mortgage, Statutory Form.

This mortgage, made the day of , in the year , by A. B., of , mortgagor, to C. D., of , mortgagee, WITNESSETH:

That the mortgagor mortgages to the mortgagee [*here describe the property*], as security for the payment to him of dollars, on [*or, before*] the day of , in the year , with interest thereon [*or as security for the payment of an obligation, describing it, etc.*] A. B.

Civil Code of 1909, § 2948.

1336. Mortgage — Short Form.

THIS INDENTURE, made the day of , in the year of our Lord one thousand eight hundred and , between , part of the first part, and , part of the second part, WITNESSETH: That the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid, do grant, bargain, sell, and convey unto the said part of the second part, and to heirs and assigns forever, all that certain piece or parcel of land situate in the , county of , bounded and described as follows:

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.*

THIS CONVEYANCE is intended as a mortgage, to secure payment of , and these presents shall be void, if such payment be made, according to the tenor and effect thereof; but in case default be made in the payment of the principal or interest, as provided, then the said part of the second part, executors, administrators, and assigns, are hereby empowered to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale, and per cent. for attorney's fees; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said part of the first part, heirs or assigns.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set
hand and seal, the day and year first above written.

[Signatures and seals.]

Signed, sealed, and delivered in the presence of

[Signatures.]

1337. Mortgage — Another Form.

[As in last previous form to *, then as follows:]

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said part of the second part, heirs and assigns forever.

THIS CONVEYANCE, however, is intended as a mortgage to secure the payment of [description of debt].

This mortgage is also intended to secure and does hereby secure, the payment of all liens, encumbrances, charges and the counsel fee herein mentioned; said counsel fee to become payable and be allowed if suit be commenced to foreclose this mortgage; and these presents shall be void if such payment be made, according to the tenor and effect thereof; but in case default be made in the payment of the said principal or any installment of interest as provided, then the whole sum of principal and interest shall be due at the option of the said part of the second part, or assigns; and suit may be immediately brought and a decree be had to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale, to retain the said principal and interest, although the time for payment of said principal sum may not have expired, together with the costs and charges of making such sale, and of suit for foreclosure, including counsel fees at the rate of per cent. upon the amount which may be found to be due for principal and interest, by the said decree, and also the amounts, both principal and interest, of all such payments of liens or other encumbrances as may have been made by said part of the second part, by reason of the permissions hereinafter given, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said part of the first part, heirs, executors, administrators or assigns.

AND IT IS HEREBY AGREED, that the said part of the second part, heirs, executors, administrators or assigns, may pay and discharge at maturity all liens or other encumbrances now subsisting or hereafter to be laid or imposed upon said lot of land and premises, and which may be in effect a charge thereupon; and such payment shall be allowed with interest thereon at the rate of per cent. per ; and such payments, and interest, and the counsel fees, costs, and other expenditures mentioned in this mortgage, shall be considered as secured by these presents, and shall be a charge and preferred lien upon said premises, and shall be repayable in the same kind of money or currency in which the same may have been paid, and may be deducted from the proceeds of the sale above authorized.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand the day and year first above written.

[Signatures.]

Signed and delivered in the presence of

[Signatures.]

COLORADO.

1338. Mortgage Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the , county of , and state of , part of the first part, and , of the , county of , and state of , part of the second part, WITNESSETH:

That the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said part of the second part, heirs and assigns, the following described real estate, situate in the , county of , and state of Colorado, to wit: [description]

TO HAVE AND TO HOLD the above described premises, together with all and singular the appurtenances and privileges thereunto belonging unto the said part of the second part, heirs and assigns forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said part of the first part, heirs, executors or administrators shall pay or cause to be paid to the said part of the second part, heirs, executors, administrators or assigns, the said sum of dollars, according to the terms, tenor and effect of promissory note for the sum of dollars, bearing even date herewith, made and delivered by the said part of the first part, and payable to the order of the said part of the second part, after the date thereof, together with interest thereon at the rate of per cent. per annum from the date thereof until paid, interest payable annually .

AND PROVIDED FURTHER, that if the said part of the first part, heirs, executors or administrators, shall well and truly perform all and singular the several covenants, conditions, agreements and promises contained in the said note , and in these presents, and shall pay all sums of money for taxes, assessments and insurance as hereinafter provided, then these presents shall be null and void, otherwise to remain in full force.

And the said part of the first part, for sel heirs, executors and administrators, covenant and agree , to and with the said part of the second part, heirs, executors, administrators and assigns, that hold the said premises by title in fee simple; that ha good right and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever, except ; that will warrant and defend said premises against the lawful claims of all persons whomsoever except as aforesaid; that will keep the buildings now or hereafter erected upon said premises insured against loss or damage by fire for

the benefit of the said part of the second part, heirs, executors, administrators and assigns, so long as this mortgage shall remain a lien upon said premises, in a sum not less than dollars, in one or more insurance companies doing business in the state of Colorado, to be approved by the said part of the second part, legal representatives or assigns, and that will deliver the policy or policies of such insurance to the said part of the second part, legal representatives or assigns, and that, upon failure so to keep said buildings insured as above stated, the said part of the second part, legal representatives or assigns, may at once cause the same to be insured as above provided; and that the said part of the first part will pay all taxes and assessments against said property before the same become delinquent, and that, in default thereof, the said part of the second part, legal representatives or assigns, may at once pay the same.

And it is expressly covenanted and agreed that if default shall be made in the payment of said note , or of any of them, or of any part thereof, or in the payment of any interest thereon, according to the tenor and effect of said note , or if the said part of the first part, legal representatives or assigns, shall allow the taxes or assessments upon the above described premises, or any part thereof, to become delinquent, or shall do or suffer any act to be done, whereby the value of the said premises shall be impaired as a security for the said note and interest, or shall fail to insure the said buildings as hereinbefore provided, or if the said part of the first part, heirs, executors, administrators or assigns, shall fail to perform or keep any of the agreements, covenants or promises contained in said note , or in these presents, then, upon the violation or breach of any of said covenants, promises or agreements, the whole amount represented by said note shall, at the election of the lawful holder thereof, become due and collectible at once, notice of such election being hereby waived, and the said part of the second part, legal representatives or assigns, may proceed to foreclose this mortgage for the purpose of satisfying and paying the entire indebtedness secured hereby, together with interest, and all taxes, assessments and insurance premiums which may have been paid by the said part of the second part, legal representatives or assigns, as aforesaid, together with interest on the same at the rate of per cent. per annum from the dates of such payments, all of which are to be included in the judgment or decree in such foreclosure suit or action.

And in case suit is brought to foreclose this mortgage, the said part of the first part, for sel and heirs, executors and administrators, agree to pay a reasonable attorney's fee therefor, which is to be included in such judgment or decree.

And in case any action or suit shall be commenced, and said part of the second part be made a party plaintiff or defendant, by reason of this mortgage, shall be allowed a reasonable attorney's fee and costs therein, and the same shall be a further lien upon said premises, and, in case of the foreclosure of this mortgage, shall be included in such judgment or decree.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

See Form No. 1556.

1339. Mortgage to Secure Promissory Note.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING: Know ye, that , for the consideration of dollars, received to full satisfaction of , do give, grant, bargain, sell, and confirm unto the said , all that parcel of land, etc. [here insert description].

TO HAVE AND TO HOLD the above-granted and bargained premises, with the appurtenances thereof, unto the said grantee, his heirs and assigns forever, to his and their proper use and behoof. And also the said grantor doth for , heirs, executors, and administrators, covenant with the said grantee, heirs and assigns, that at and until the ensembling of these presents, is well seized of the premises as a good, indefeasible estate in fee simple, and has good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrance whatsoever. And furthermore, , the said grantor, do, by these presents, bind myself and my heirs forever to warrant and defend the above-granted and bargained premises to the said grantee, his heirs and assigns, against all claims and demands whatsoever.

The condition of this deed is such that, WHEREAS, the said grantor is justly indebted to the said grantee in the sum of dollars, as evidenced by a promissory note dated the day of , 19 , payable to said grantee, or order, on demand, for value received, with interest at the rate of per cent. per annum: Now, if the said note shall be paid according to its tenor, and all money expended by the grantee for insurance and taxes on said premises, then this deed shall be void; otherwise to be and remain in full force and effect.

IN WITNESS, ETC.

[Signatures and seals.]

Signed and sealed in presence of

[Signatures.]

1340. Deed of Trust.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the , county of , and state of Colorado, part of the first part, and , of the , county of , and state of Colorado, party of the second part, trustee: WITNESS, that whereas ha executed promissory note bearing even date herewith, for the principal sum of dollars, payable to the order of , after the date thereof, with interest thereon from until paid, at the rate of per cent. per annum, payable .

AND, WHEREAS, the said part of the first part desirous of securing the payment of the principal and interest of said promissory note in whose hands soever the said note or any of them may be,

NOW, THEREFORE, the part of the first part, in consideration of the premises and for the purpose aforesaid, and in the further consideration of one dollar, to in hand paid by the party of the second part, the receipt whereof is hereby confessed, ha and do hereby grant, bargain, sell and convey unto the said party of the second part, and successor in trust forever, all the lands and premises situate in the , county of , state of Colorado, known and described as follows, to wit: [description]

TO HAVE AND TO HOLD THE SAME, together with all and singular the privileges and appurtenances thereunto belonging: In trust, nevertheless, that in case of default in payment of said promissory note or any part thereof, or the interest thereon, according to the tenor or effect thereof, or in case of the breach of any of the covenants or agreements herein mentioned, then this deed of trust may be treated as a mortgage and be foreclosed in and through the courts for the purpose of paying the indebtedness secured hereby. And the part of the first part for sel and heirs, executors and administrators, covenant and agree to and with the said party of the second part and his successor in trust hereinafter named to pay in due season all taxes and assessments on said premises and to keep all buildings that may be on said premises at any time during the continuance of said indebtedness, or any part thereof, insured in such company or companies as the holder or holders of said note may from time to time direct, for such sum or sums for which such company or companies will insure, not to exceed the amount of said indebtedness (except at the option of the part of the first part) with loss payable to the trustee herein or the holder or holders of said note and to deliver to said trustee or the holder or holders of said note the said policy or policies of insurance as further security for the indebtedness aforesaid, and in case of failure for any cause thus to insure or deliver the policy or policies of insurance or pay such taxes or assessments, said trustee or the holder or holders of said note , or either of them, may procure such insurance and pay such taxes or assessments and all moneys thus paid with interest thereon at the rate of per cent. per annum shall become so much additional indebtedness secured by this deed of trust; and to pay all the reasonable costs, charges, attorneys' and solicitors' fees of the party of the second part or the payee or holder or holders of said note incurred in any foreclosure action, other suit or proceeding by reason hereof, and the same with interest at the rate last aforesaid shall become so much additional indebtedness secured hereby; and, if, when the entire indebtedness herein mentioned shall have been paid, a release deed is desired, to pay the expense thereof, including compensation of the said trustee for executing the same; and that at the time of the ensailing and delivery of these presents the said part of the first part well seized of the premises in fee simple and ha good right, full power and lawful authority to grant, bargain and sell the same in the manner and form as aforesaid; and that the same are free and clear of all liens and incumbrances whatsoever (except).

AND IT IS STIPULATED AND AGREED, that in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein, then and in that case the whole of the indebtedness hereby secured and the interest thereon may, at the option of the holder or holders thereof, at once become due and payable, and this deed of trust foreclosed in the manner and with the same effect as if said indebtedness had matured.

AND IT IS FURTHER STIPULATED AND AGREED, that in case of any default whereby the right of foreclosure occurs hereunder the party of the second part or the successor in trust herein or the holder or holders of said note shall at once become entitled to the possession, use and enjoyment of the property aforesaid, and to the rents, issues and profits thereof from the accruing of such right and during the pendency of foreclosure proceedings and the period of redemption, if any there be, and such possession, use and enjoyment shall at once be delivered to the party of the second part or the successor in trust or the holder or holders of said note on request, and on refusal may be enforced by an action of unlawful detainer, or any other proper civil suit or proceeding, and such rents, issues and profits shall be applied toward the payment of the indebtedness hereby secured.

AND IT IS FURTHER AGREED and especially understood that in case of death, resignation, removal or absence, either temporary or permanent, from the of , or refusal, failure or inability of the party of the second part to act, then shall be, and hereby is, appointed and made successor in trust herein, with like power and authority as the said party of the second part, and the said premises shall become vested in such new trustee accordingly.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

CONNECTICUT.

When real estate encumbered by mortgage or lien is conveyed, subject to such mortgage or lien, and in such conveyance there is a provision that the grantee shall assume and pay such encumbrance, the holder of such mortgage or lien may, upon nonpayment of the same, maintain an action in his own name upon such promise, without obtaining an assignment thereof from the grantor of said premises. General Statutes, Revision of 1902, § 587.

1341. Mortgage Deed.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING: Know ye, that , for the consideration of , received to full satisfaction of , do give, grant, bargain, sell and confirm unto the said [description of premises]

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said grantee , heirs and assigns forever, to and their proper use and behoof. AND ALSO, , the said grantor do for sel , heirs, executors and administrators, covenant with said grantee , heirs and assigns, that at, and until the enseal-

ing of these presents well seized of the premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever.

AND FURTHERMORE, , the said grantor do by these presents bind sel and heirs forever, to WARRANT and defend the above granted and bargained premises to , the said grantee , heirs and assigns, against all claims and demands whatsoever.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , A. D. 19 .

The condition of this deed is such, that whereas the said grantor justly indebted to the said grantee in the sum of , as evidenced by promissory note of even date herewith; payable to said grantee or order , with interest.

Now, THEREFORE, if said note shall be well and truly paid, according to its tenor, then this deed shall be void, otherwise to remain in full force and effect. [Signatures.]

Signed, sealed and delivered in presence of

[Signatures.]

DELAWARE.

1342. Mortgage Securing a Bond.

INDENTURE, made the day of , 18 , between , party of the first part, and , party of the second part:

WHEREAS, the said party of the first part, in and by a certain obligation or writing obligatory under his hand and seal, bearing even date herewith, stands bound unto the said party of the second part, in the sum of dollars, lawful money of the United States, conditioned for the payment of the sum of dollars, as by reference to the said obligation and the condition thereof will appear:

Now, THIS INDENTURE WITNESSETH: That the said party of the first part, for and in consideration of the aforesaid debt or sum of dollars, and for the better securing the payment of the same, with interest as aforesaid, unto the said party of the second part, his executors, administrators, and assigns, in discharge of the said recited obligation, as also of the further sum of one dollar to the said party of the first part, now paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm, unto the said party of the second part, heirs and assigns, all that, etc. [*here insert description*]; together with all and singular the improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

TO HAVE AND TO HOLD the said improvements, hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, heirs and assigns, to

the only proper use and behoof of the said party of the second part, heirs and assigns forever.

Provided always, nevertheless, that if the said party of the first part, heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the said party of the second part, executors, administrators, or assigns, the aforesaid debt or sum of dollars on the day and at the time hereinbefore mentioned and appointed for the payment thereof, with interest, according to the condition of the said recited obligation, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything, for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth as well this present indenture and the estate hereby granted as the said recited obligation shall cease, determine, and become absolutely void and of no effect, anything hereinbefore contained to the contrary in anywise notwithstanding.

IN WITNESS, ETC.

[Signatures and seals.]

Sealed and signed in presence of

[Signatures.]

DISTRICT OF COLUMBIA.

1343. Mortgage, with or without Power of Sale, Statutory Form.

This mortgage, made this day of , in the year , WITNESSETH that whereas I, of am indebted unto , of in the sum of , payable , for which I have given to said (promissory notes or bonds or other instruments) [*here describe obligation*]. Now, in consideration thereof, I hereby grant unto the said all that [*here describe property*], provided that if I shall punctually pay said (notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said

is hereby authorized and empowered to sell said property at public auction on the following terms [*here insert them*], and out of the proceeds of sale to retain whatever shall remain unpaid of any said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

[SEAL.]

Code of Law of 1910, p. 157, chap. XVI, sub. chap. V.

1344. Deed of Trust.

THIS DEED, made this day of , A. D. 19 , by and between , part of the first part, and , part of the second part;

WHEREAS, justly indebted unto , in the full sum of dollars

AND WHEREAS, the part of the first part desire to secure the prompt payment of said debt, and interest thereon, when and as the same shall become due and payable, and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred or paid by the said part of the second part or substituted trustee, or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or the property hereinafter mentioned, and of all money which may be advanced as provided herein, with interest on all such costs and advances from the date thereof.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the part of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to _____ in hand paid by the part of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, ha granted, and do hereby grant unto the part of the second part, _____, the following described land and premises, situate in the _____ of Washington, District of Columbia, known and distinguished as [description] together with all the improvements in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the part of the first part, of, in, to, or out of the said land and premises.

IN AND UPON THE TRUSTS, NEVERTHELESS, hereinafter declared; that is to say: In trust to permit said _____ or assigns, to use and occupy the said described land and premises, and the rents, issues, and profits thereof to take, have, and apply to and for _____ their sole use and benefit, until default be made in the payment of _____ promissory note hereby secured or any installment of interest thereon, when and as the same shall become due and payable, or any proper cost or expense in and about the same as hereinafter provided.

AND upon the full payment of all of said note and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, charges, commissions, half-commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said _____, or assigns, at _____, their cost.

AND UPON THIS FURTHER TRUST, upon any default or failure being made thereon, when and as the same shall become due and payable, or upon default being made in the payment, after demand therefor, of any money advanced as herein provided for, or of any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter the said part of the second part _____, or the trustee acting in the execution of this trust shall have the power and it shall be _____ or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and conditions, in such parcels, at such time and place, and after such previous public advertisement as the part of the second part, _____ or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple, upon compliance with the terms of sale, to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales: Firstly, to pay all proper costs, charges and expenses, including all fees and costs herein provided for, and all moneys advanced for taxes, insurance, and assessments, with interest thereon as provided herein, and all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of _____ per centum on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of said _____ note _____, whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said note shall, upon such sale being made before the maturity of said note _____, be and become immediately

due and payable at the election of the holder thereof; and, lastly, to pay the remainder of said proceeds, if any there be, to said _____, or assigns, upon the delivery and surrender to the purchaser, his, her or their heirs or assigns, of possession of the premises so as aforesaid sold and conveyed, less the expense, if any, of obtaining possession.

AND the said _____ do hereby agree at _____ own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid, to keep the said improvements insured against loss by fire in the full sum of _____ dollars, in the name and to the satisfaction of the part of the second part, or substituted trustee, in such fire insurance company or companies as the said part of the second part may select, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied; and also to pay all taxes and assessments, both general and special, that may be assessed against, or become due on said land and premises during the continuance of this trust, and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the rate of six per centum per annum from the time of such payment.

AND it is further agreed that if the said property shall be advertised for sale as herein provided and not sold, the trustee or trustees acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

AND the said part of the first part covenant that _____ will warrant specially the land and premises hereby conveyed, and that _____ will execute such further assurances of said land as may be requisite or necessary.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal on the day and year first hereinbefore written.

[Signatures and seals.]

Signed, sealed, and delivered in the presence of

[Signatures.]

FLORIDA.

1345. Realty and Crop Mortgage.

STATE OF FLORIDA, }
County. }

THIS INDENTURE, made this, the _____ day of _____, A. D. 19____, between _____, of _____ county, _____, part of the first part, and _____, of _____ county, Florida, part of the second part: WITNESSETH, that said part of the first part, for and in consideration of the sum of one dollar, to _____ in hand paid by the part of the second part, at or before the signing, sealing and delivery of this indenture, the receipt whereof is hereby acknowledged, and, also, for the better securing the payment of _____ certain promissory note bearing even date with this indenture, for the sum of _____ dollars, bearing interest at the rate of _____ per cent. per annum from

, payable to or order, on the day of , A. D. 19 , and signed by , a copy of which said note is hereto appended, as well, also, as to secure the payment of any and all further advances, either in money or supplies, made by the part of the second part to the part of the first part during the current year, in excess of the amount of the above note, ha granted, bargained, sold and conveyed, and by this indenture do grant, bargain, sell and convey unto the said part of the second part, heirs, assigns, etc., the following-described property, lying, being and situate in county, , and more particularly described as follows, to wit:

All the crop [*describe it*] grown or cultivated by or for the part of the first part in county during the year ; also all that certain piece, parcel or tract of land situate, lying and being in the county of , state of Florida, described as follows: [*description*]

Said part of the first part also covenant to and with the said part of the second part, that the property herein mortgaged is clear and unencumbered from any mortgages or liens of any nature or kind whatsoever. To have and to hold the same, together with all the rights, titles, members and improvements thereon unto the said part of the second part, heirs, assigns, etc., forever, in fee simple; it being expressly understood and agreed by and between the parties hereto that any and all advances, either in money or supplies, made as aforesaid, shall be a lien upon the property herein mortgaged in the same manner and to the same extent as the lien herein given for the security of said note above described. In case of foreclosure bind to pay all costs of suit and an attorney's fee of ten per cent. on the amount recovered in case of foreclosure or otherwise if the claim is put into the hands of an attorney for collection.

PROVIDED, NEVERTHELESS, that if the said part of the first part, heirs or assigns, shall well and truly pay, or cause to be paid, the above-described promissory note, when the same shall become due and payable, according to the tenor and intent of the same, together with any and all advances, in addition to said note, made in accordance with the provisions hereof, then these presents shall be void, but otherwise of full force and virtue.

IN TESTIMONY WHEREOF, the said part of the first part ha hereto set hand and seal the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in the presence of
[*Signatures.*]

COPY OF NOTE.

§ , 19 .
after date promise to pay to or order, at , the sum of dollars, value received, with interest at the rate of per cent. per annum from ; together with an attorney's fee of ten per cent. on the amount recovered in case of foreclosure or otherwise if the claim is put into the hands of an attorney for collection.

[*Signatures.*]

Witness:

[*Signature.*]

1346. Mortgage Securing a Promissory Note.

INDENTURE, made the day of , 18 , between , of the first part, and , of the second part:

WHEREAS, the said is justly indebted to , party of the second part, in the sum of dollars lawful money of the United States, as evidenced by promissory note of even date herewith, drawn by , to the order of , and payable in years from the date hereof, with interest at the rate of per cent. per annum. NOW THIS INDENTURE WITNESSETH: That the said party of the first part, for the better securing the payment of the said sum of money mentioned in said note, and also for and in consideration of the sum of one dollar to in hand paid by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to heirs and assigns forever, all that, etc. [*here insert description*]; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above-granted and described premises unto the said party of the second part, heirs and assigns, to and their own proper use, benefit, and behoof forever; provided, always, and these presents are on this express condition, that if the said party of the first part, heirs, executors, administrators, or assigns, shall pay the said sum of dollars, with interest, according to the true intent and meaning of said promissory note, together with all costs, charges, and expenses which the said party of the second part may incur, or be put to in collecting the same by foreclosure, that then these presents, and the estate hereby granted, shall cease, determine, and be absolutely null and void. And the said party of the first part, for and heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, heirs, executors, administrators, or assigns, the said debt, and all costs, charges, and expenses the party of the second part may incur or be put to in collecting the same by foreclosure.

IN WITNESS WHEREOF, ETC.

[*Signatures and seals.*]

Signed and sealed in presence of

[*Signatures.*]

1347. Mortgage Deed, Another Form.

THIS MORTGAGE DEED, executed the day of , A. D. 19 , by , hereinafter called the mortgagor, to , hereinafter called the mortgagee,

WITNESSETH, that for divers good and valuable considerations, and also in consideration of the aggregate sum named in the promissory note of even

date herewith, hereinafter described, the said mortgagor grant, bargain, sell, alien, remise, release, convey and confirm unto the said mortgagee, heirs and assigns, in fee simple, all the certain tract of land, of which the said mortgagor now seized and possessed, and in actual possession, situate in county, state of Florida, described as follows: [description]

TO HAVE AND TO HOLD the same, together with the tenements, hereditaments, and appurtenances, unto the said mortgagee, and heirs and assigns, in fee simple.

And said mortgagor, for and heirs, legal representatives and assigns, covenant with said mortgagee, heirs, legal representatives and assigns, that said mortgagor indefeasibly seized of said land in fee simple; that the said mortgagor full power and lawful right to convey said land in fee simple as aforesaid; that it shall be lawful for said mortgagee, heirs, legal representatives and assigns, at all times peaceably and quietly to enter upon, hold, occupy and enjoy said land; that said land is free from all encumbrances; that said mortgagor, heirs and legal representatives, will make such further assurances to perfect the fee simple title to said land in said mortgagee, heirs, legal representatives and assigns, as may reasonably be required; and that said mortgagor hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS, that if said mortgagor, heirs, legal representatives or assigns, shall pay unto the said mortgagee, legal representatives or assigns, the certain promissory note, of which the following in words and figures true cop, to wit: [here give copy of note] and shall perform, comply with and abide by each and every the stipulations, agreements, conditions and covenants of said promissory note and of this deed, then this deed and the estate hereby created shall cease and be null and void.

And the said mortgagor, for and heirs, legal representatives and assigns, hereby covenant and agree:

1. To pay all and singular the principal and interest and other sums of money payable by virtue of said promissory note and this deed, or either, promptly on the days respectively the same severally come due.

2. To pay all and singular the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on said described property each and every, and if the same be not promptly paid the said mortgagee, heirs, legal representatives or assigns, may at any time pay the same without waiving or affecting the option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the rate of per cent. per annum.

3. To pay all and singular the costs, charges and expenses, including lawyer's fees, reasonably incurred or paid at any time by said mortgagee, heirs, legal representatives or assigns, because of the failure on the part of the said mortgagor, heirs, legal representatives or assigns, to perform, comply with and abide by each and every the stipulations, agreements, conditions and covenants of said promissory note and this deed, or either, and every such payment shall bear interest from date at the rate of per cent. per annum.

4. To keep the buildings now or hereafter on said land insured in a sum not less than dollars, in a company or companies to be approved by said mortgagee , and the policy or policies held by and payable to said mortgagee , heirs, legal representatives or assigns, and in the event any sum of money becomes payable under such policy or policies, the mortgagee , heirs, legal representatives or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit the mortgagor to receive and use it, or any part thereof, for other purposes, without thereby waiving or impairing any equity lien or right under or by virtue of this mortgage, and may place and pay for such insurance or any part thereof without waiving or affecting the option to foreclose or any right hereunder, and each and every such payment shall bear interest from date at the rate of per cent. per annum.

5. To permit, commit or suffer no waste, impairment or deterioration of said property or any part thereof.

6. To perform, comply with, and abide by each and every the stipulations, agreements, conditions and covenants in said promissory note and in this deed set forth.

7. If any of said sums of money herein referred to be not promptly and fully paid within days next after the same severally become due and payable, or if each and every the stipulations, agreements, conditions and covenants of said promissory note and this deed, or either, are not duly performed, complied with and abided by, the said aggregate sum mentioned in said promissory note shall become due and payable forthwith or thereafter at the option of the mortgagee , heirs, legal representatives or assigns, as fully and completely as if the said aggregate sum of dollars was originally stipulated to be paid on such day, anything in said promissory note or herein to the contrary notwithstanding.

IN WITNESS WHEREOF, the said mortgagor hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signature.]

GEORGIA.

1348. Mortgage Deed.

STATE OF GEORGIA, }
County. }

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred , between , of the county of , of the one part, and , of the county of , of the other part, WITNESSETH: that the said part of the first part, for and in consideration of the sum of five dollars in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for the securing of the below mentioned debts ha granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey,

and confirm unto the said party of the second part, heirs and assigns, all [description]

TO HAVE AND TO HOLD the said granted premises, with all and singular the rights, members, and appurtenances thereto appertaining, to the only proper use, benefit, and behoof of the said grantee, heirs, executors, administrators, and assigns, in fee simple; and the said grantor the said granted premises unto the said grantee, heirs, executors, administrators, and assigns, against the said grantor, heirs, executors, and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents: Provided, however, that this conveyance shall be void when the following described debts are fully paid off and discharged, to wit: [describe debts] and in order to further secure said debts, the grantor waive all right of homestead and exemption under the constitution and laws of Georgia, specially as to said mortgaged property, and generally as to all of grantor's property.

IN WITNESS WHEREOF, the said grantor ha hereunto set hand, affixed seal, and delivered these presents the day and year first above written.

[Signatures and seals.]

Signed, sealed, and delivered in presence of us

[Signature.]

IDAHO.

See Form No. 1557.

1349. Mortgage Deed.

[As in Form 1375 to *, then insert the following:] together with all the rights to the use of water for irrigating said premises and for domestic use thereon to which the said party of the first part, or the premises hereby conveyed, are now or may hereafter become entitled, or which now are or may hereafter be used on said premises, however the same may be evidenced, and together with all shares of stock or shares of water in any ditch or irrigation company which in any manner entitle said party of the first part to water for irrigating or domestic purposes upon said premises. [Continue as in Form 1375.]

1350. Mortgage.

THIS INDENTURE, made the day of, in the year of our Lord one thousand nine hundred and, between, of, county of, state of, the part of the first part, and, of, county of, state of, the part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, unto the said part of the second part, and to heirs and assigns, forever, all certain lot,

piece or parcel of land, situate, lying and being in the _____, county of _____, and state of Idaho, and particularly described as follows, to wit: [description] together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

THIS GRANT is intended as a mortgage to secure the payment of _____ certain promissory note of even date herewith, executed and delivered by the said _____ to the said part of the second part, _____ of which note in words and figures following, to wit: [copy]

And these presents shall be void if such payment be made. But in case default shall be made in the payments of said principal sum of money, or any part thereof, as provided in said note, or if the interest be not paid as herein specified, then and from thenceforth it shall be optional with the said part of the second part, _____ executors, administrators, or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable, although the time expressed in said note for the payment thereof shall not have arrived; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same and all benefit and equity and redemption of the said part of the first part, _____ heirs, executors, administrators, or assigns, according to law, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit, including _____ counsel fees _____, and also the amounts of all such payments of taxes, assessments, encumbrances, or insurance as may have been made by said part of the second part, _____ heirs, executors, administrators or assigns, by reason of the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase money (if any there shall be) unto the said _____, part of the first part, _____ heirs, executors, administrators or assigns. And the said part of the first part do hereby further covenant, promise and agree, to and with the said part of the second part, to pay and discharge, at maturity, all such taxes or assessments, liens or other encumbrances now subsisting, or hereafter to be laid or imposed upon said premises _____, or which may be in effect a prior charge thereupon to these presents, during the continuance hereof, and in default thereof, the said part of the second part may pay and discharge the same, and may, at his option, keep fully insured against all risks by fire the buildings which are now or may be hereafter erected thereon, at the expense of the said part of the first part, and the sums so paid shall bear interest at the rate of _____ per cent. per _____ until paid, and shall be considered as secured by these presents and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof, above mentioned, with interest as _____ provided.

IN WITNESS WHEREOF, the said part of the first part ha _____ hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

ILLINOIS.

1351. Mortgage, Statutory Form.

The mortgagor [*here insert name or names*], mortgages and warrants to [*here insert name or names of mortgagee or mortgagees*], to secure the payment of [*here recite the nature and amount of indebtedness, showing when due and the rate of interest, and whether secured by note or otherwise*], the following described real estate [*here insert description thereof*], situated in the county of _____, in the state of Illinois.

Dated this _____ day of _____, A. D. 19 _____.

A. B. [L. s.]

Revised Statutes of 1908, p. 490, § 11.

If the mortgage contains the words "and warrants," the same shall be construed the same as if full covenants of seizin, good right to convey, against encumbrances, of quiet enjoyment and general warranty, as expressed in § 9, were fully written therein; but if the words "and warrants" are omitted, no such covenants shall be implied. *Ibid.*

For § 9 see p. 744 anti.

1352. School Mortgage, Statutory Form.

I, A B, of the county of _____ and State of _____, do hereby grant, convey and transfer to the trustees of schools of township _____, range _____, in the county of _____ and state of Illinois, for the use of the inhabitants of said township, the following described real estate, to wit: [*Here insert premises*] which real estate I declare to be in mortgage for the payment of _____ dollars loaned to me, and for the payment of all interest that may accrue thereon, to be computed at the rate of _____ per cent. per annum until paid. And I do hereby covenant to pay the said sum of money in _____ years from the date hereof, and to pay the interest on the same annually at the rate aforesaid. I further covenant that I have a good and valid title to said estate, and that the same is free from all incumbrance, and that "I will pay all taxes and assessments which may be levied on said estate; and that I will give any additional security that may at any time be required, in writing, by said board of trustees and if said estate be sold to pay said debt, or any part thereof, or for any failure or refusal to comply with or perform the conditions or covenants herein contained, I will deliver immediate possession of the premises. And it is further agreed by and between the parties in case a bill is filed in any court to foreclose this mortgage for non-payment of either principal or interest, that the mortgagor will pay a reasonable solicitor's fee and the same shall be included in the decree and be taxed as costs; and we, A B and C, wife of A B, hereby release all right to the said premises which we may have by virtue of any homestead laws of this state, and in consideration of the premises, C, wife of A B, doth hereby release to said board all her right and title of dower in the above granted premises for the purpose aforesaid.

IN TESTIMONY WHEREOF, we have hereby set our hands and seals this day of _____ 19 _____.

A B. [SEAL]

C D. [SEAL]

Ibid., p. 1927, § 105.

1353. Mortgage, with Power to Appoint Receiver, and Insurance Clause.

THIS INDENTURE, WITNESSETH, that the mortgagor, _____, of the _____, in the county of _____, and state of _____, mortgage and warrant to _____, of the _____, county of _____, and state of _____, to secure the payment of _____ certain promissory note executed by _____, bearing even date herewith, payable to the order _____, the following described real estate, to wit: [*description*] situated in the county of _____, in the state of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the state of Illinois, and all right to retain possession of said premises after any default in payment or breach of any of the covenants or agreements herein contained.

BUT IT IS EXPRESSLY PROVIDED AND AGREED, that if default be made in the payment of the said _____ promissory note, or of any part thereof or the interest thereon, or any part thereof, at the time and in the manner above specified for the payment thereof, or in case of waste or non-payment of insurance, taxes or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then and in such case the whole of said principal sum and interest, secured by the said _____ promissory note in this mortgage mentioned, shall thereupon, at the option of the said mortgagee, _____ heirs, executors, administrators, attorneys or assigns, become immediately due and payable. And this mortgage may be immediately foreclosed to pay the same by said mortgagee, _____ heirs, executors, administrators, attorneys or assigns. And it shall be lawful for the said mortgagee, _____ heirs, executors, administrators, attorneys or assigns, to enter into and upon the premises hereby granted, or any part thereof, and to receive and collect all rents, issues and profits thereof.

UPON the filing of any bill to foreclose this mortgage in any court having jurisdiction thereof, such court may appoint _____, or any proper person, receiver, with power to collect the rents, issues and profits arising out of said premises during the pendency of such foreclosure suit, and until the time to redeem the same from any sale that may be made under any decree foreclosing this mortgage shall expire, and such rents, issues and profits, when collected; may be applied toward the payment of the indebtedness and costs herein mentioned and described. And upon the foreclosure and sale of said premises, there shall be first paid out of the proceeds of such sale all expenses of advertisement, selling and conveying said premises, and _____ dollars attorney's or solicitor's fees, to be included in the decree, and all moneys advanced for abstracts of title, insurance, taxes and other liens or assessments with interest thereon at seven per cent. per annum, then to pay the principal of said note, whether due and payable by the terms thereof or the option of the legal holder thereof, and interest due on said note up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, _____ legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires, to the purchaser or purchasers of said premises at such sale or sales, and it shall not be the duty of the purchaser to see to the application of the purchase money.

THE SAID MORTGAGOR covenant and agree that he will keep all buildings that may at any time be upon said premises, insured in such companies as the holder of said notes shall direct, for their full insurable value, and make the loss, if any, payable to, and deposit the policies of insurance with, the party of the second part, or his assigns, as further security for the indebtedness aforesaid.

Dated this day of , A. D. 19 .

[Signatures and seals.]

1354. Mortgage.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of , party of the first part, and of the of , in the county of , and state of , party of the second part:

WHEREAS, the party of the first part is justly indebted to the said party of the second part in the sum of dollars, secured to be paid by certain note [or, bond, *describing it*].

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon according to the tenor and effect of the said note [or, bond], above mentioned, and also in consideration of the further sum of one dollar, to him in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part, and to heirs and assigns forever, all the following described lot , piece , or parcel of land, together with all the rents, issues, profits thereof, situate in the of county of , and state of , and known and described as follows, to wit: [*here insert description*].

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, or in anywise appertaining; and also, all the estate, interest, and claim whatsoever, in law as well as in equity, which the said party of the first part has in and to the premises hereby conveyed unto the said party of the second part, heirs and assigns, and to their only proper use, benefit, and behoof forever;

PROVIDED, ALWAYS, and these presents are upon this express condition, that if the said party of the first part, his executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the said party of the second part, heirs, executors, administrators, or assigns, the aforesaid sum of money, with interest thereon, at the time and in the manner specified in the above-mentioned note [or, bond], according to the true intent and meaning thereof, then and in that case these presents and everything herein expressed, shall be absolutely null and void.

BUT IT IS FURTHER PROVIDED AND AGREED, that if default be made in the payment of the said note [or, bond], or any part thereof, or the interest thereon, or any part thereof, at the time and in the manner and at the place

above limited and specified for the payment thereof, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance, as hereinafter provided, or in case of the breach of any of the covenants or agreements herein contained, then and in such case the whole of said principal and interest secured by the said note [or, bond], in this mortgage mentioned, shall thereupon at the option of the said party of the second part,

heirs, executors, administrators, attorneys, or assigns, become immediately due and payable; anything herein or in said note [or, bond], contained to the contrary notwithstanding, and this mortgage may then be immediately foreclosed to pay the same by said party of the second part, heirs, executors, administrators, or assigns, and it shall be lawful for the party of the second part, heirs, executors, administrators, attorneys, or assigns,

to enter into and upon the premises hereby granted, or any part thereof, and to receive all rents, issues and profits thereof. And the party of the first part hereby authorizes and empowers any attorney of any court of record to enter appearance upon the filing of any bill to foreclose this mortgage in any court having jurisdiction thereof, and to file an answer for

and in name, stating the amount that may then be owing on said note [or, bond], in this mortgage mentioned, for principal and interest, also for costs, taxes, insurance, attorneys' fees, and other money expended under the provisions contained herein, whether the same be due by the terms of this mortgage, or by the option of the said party of the second part,

heirs, executors, administrators, or assigns, and to consent and agree to an immediate decree being entered for the amount therein stated to be so due and owing in favor of the said party of the second part, heirs, executors, administrators, or assigns, and to consent and agree that an immediate sale of said premises may be made, and that no appeal shall be taken from such decree or writ of error sued out thereon.

In case of the filing of any bill in any court of competent jurisdiction to foreclose this mortgage, the court may appoint , or any suitable person, receiver, with power to collect the rents, issues, and profits arising out of said premises during the pendency of such foreclosure suit, and until the right to redeem said premises from any sale thereof, to be made by virtue of said proceedings, shall have expired, and such rents, issues, and profits shall be applied toward the payment of said indebtedness and the costs of such foreclosure. And upon the foreclosure of this mortgage by proceedings in court, or in case of any suit or proceeding at law or in equity, wherein said party of the second part, executors, administrators, or assigns, or the legal holder of said , or either of them, shall be a party plaintiff or defendant, by reason of being a party to this mortgage, or a holder of either of said , he or they shall be allowed and paid by the said party of the first part, their reasonable costs and charges, and dollars, as attorneys' and solicitors' fees in such suit or proceeding, and the same shall be included as a part of the costs in any decree for the foreclosure of this mortgage, or the sale of said premises.

AND IN CONSIDERATION of the money loaned as aforesaid to the said party of the first part, and in order to create a first lien and encumbrance on said

premises under this mortgage, for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part doth hereby agree to surrender up possession thereof to the purchaser or purchasers at such sale, or to any receiver that may be appointed by the court, peaceably on demand.

And the said party of the first part, for himself, his heirs, executors, administrators, and assigns, covenants and agrees to and with the said party of the second part, executors, administrators, and assigns, that at the time of the ensembling and delivery of these presents, he is well seized of said premises in fee simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and encumbrances whatsoever; and that he will forever warrant and defend the same against all lawful claims; that the said party of the first part will in due season pay all taxes and assessments on said premises, and exhibit once a year, on demand, receipts of the proper persons to said party of the second part, or assigns, showing payment thereof, until the indebtedness aforesaid shall be fully paid; and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness, insured in such company or companies as the said party of the second part, or assigns, may from time to time direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said party of the first part, and will make the loss, if any, payable to, and deposit the policy or policies with, the said party of the second part, or assigns, as further security for the indebtedness aforesaid. And in case of the refusal or neglect of said party of the first part, thus to insure, or assign the policies of insurance, or to pay taxes, said party of the second part, or executors, administrators, or assigns, or either of them, may procure such insurance or pay such taxes, and all moneys thus paid, with interest thereon at [seven] per cent. per annum, shall become so much additional indebtedness, secured by this mortgage, and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part.

AND IT IS STIPULATED AND AGREED, that in case of default in any of said payments of principal or interest, according to the tenor and effect of said aforesaid, or either of them, or any part thereof, or of a breach of any of the covenants or agreements herein by the party of the first part, executors, administrators, or assigns, then, and in that case, the whole of said principal sum hereby secured, and the interest thereon to the time of sale, may at once, at the option of the said party of the second part, executors, administrators, attorneys, or assigns, become due and payable, and this mortgage may be foreclosed in the manner and with the same effect as if the said indebtedness had matured.

IN TESTIMONY, ETC.

INDIANA.

A mortgage granted by a purchaser to secure purchase-money shall have preference over a prior judgment against such purchaser. Annotated Statutes, Revision of 1908, § 1136.

1355. Mortgage, Statutory Form.

A. B. mortgages and warrants to C. D. [*here describe the premises*], to secure the re-payment of [*here recite the sum for which the mortgage is granted or the notes or other evidences of debt, or a description thereof, sought to be secured, also the date of the re-payment*].

Ibid., § 3961.

The said mortgagee shall be deemed and held to be with warranty of perfect title in the grantor and against all previous incumbrances. If the words "and warrant" are omitted in the above form, the mortgage shall be good, but without warranty. Ibid.

1356. Mortgage.

THIS INDENTURE, WITNESSETH, that _____, of _____ county, in the state of _____, mortgage and warrant to _____ of _____ county, in the state of _____, the following real estate, in _____ county, in the state of Indiana, to wit: [*description*] to secure the payment, when _____ becomes due of [*describe obligation*], and the mortgagor expressly agree to pay the sum of money above secured and attorney's fees without relief from valuation laws.

IN WITNESS WHEREOF, the mortgagor ha hereunto set _____ hand and seal this _____ day of _____, A. D. 19 _____.

[*Signatures and seals.*]

1357. Mortgage.

THIS INDENTURE, WITNESSETH, that _____, of _____ county, in the state of _____, mortgage and warrant to _____, of _____ county, in the state of _____, the following real estate, in _____ county, in the state of Indiana, to wit: [*description*] to secure the payment, when _____ become due of _____, and the mortgagor expressly agree to pay the sum of money above secured without relief from valuation laws; and upon failure to pay any one of said notes at maturity, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed that until all of said notes are paid, said mortgagor will keep all legal taxes and charges against said premises paid as the same become due, and will keep the buildings thereon insured for the benefit of the mortgagee, as his interest may appear, to the amount of _____, and failing to do so, said mortgagee may pay said taxes or insurance, and the amount so paid, with eight per cent. interest thereon, shall be a part of _____ debt secured by this mortgage.

IN WITNESS WHEREOF, the mortgagor ha hereunto set _____ hand and seal, this _____ day of _____, A. D. 19 _____.

[*Signatures and seals.*]

IOWA.**1358. Mortgage on Real Property, Statutory Form.**

(Ann. Code of 1897, § 2958.)

For the consideration of _____ dollars, I hereby convey to A. B. the following tract of land [*describing it*], and I warrant the title against all persons whomsoever. To be void upon condition that I pay, etc.

Dated this _____ day of _____, _____.

1359. Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that _____, of _____ county, and state of _____, in consideration of the sum of _____ dollars, in hand paid by _____, of _____ county, and state of _____, do hereby sell and convey unto the said _____, the following described premises, situated in the county of _____, and state of _____, to wit: [description] and _____ hereby covenant with the said _____ that _____ hold said premises by title in fee simple; that _____ ha good right and lawful authority to sell and convey the same; that they are free and clear of all liens and encumbrances whatsoever; and _____ covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever; and the said _____ hereby relinquishes _____ right of dower in and to the above described premises.

PROVIDED, ALWAYS, and these presents are upon this express condition, that if the said _____, heirs, executors, or administrators, shall pay or cause to be paid to the said _____, executors and administrators, or assigns, the sum of _____ dollars, on the _____ day of _____, 19 _____; _____ dollars, on the _____ day of _____, 19 _____; _____ dollars, on the _____ day of _____, 19 _____, with interest thereon _____, according to the tenor and effect of the _____ promissory note of the said _____, payable to _____, bearing _____, date _____, then these presents to be void, otherwise to remain in full force.

And it is hereby agreed, that the said _____ shall keep the buildings on said property insured in a good and reliable company, to be selected by said mortgagee, in the sum of _____ dollars.

And it is hereby further agreed, that if the said _____ allows the taxes to become delinquent upon said property, or permits the same, or any part thereof, to be sold for taxes, or if _____ fail to pay the interest on said note promptly as the same becomes due, the note secured hereby shall become due and payable in _____ days thereafter; and the mortgagee, _____ heirs, or assigns, may proceed to at once foreclose this mortgage, and in case it becomes necessary to commence proceedings to foreclose the same, then the said _____, in addition to the amount of said debt, interest and costs, agree to pay to the mortgagee herein named, or to any assignee of the mortgagee herein, a reasonable attorney's fee for collecting the same, which fee shall be included in judgment in such foreclosure case.

Signed and delivered, this _____ day of _____, 19_____.

[Signatures.]

KANSAS.

1360. Mortgage, Statutory Form.

A. B. mortgages and warrants to C. D. [here describe the premises], to secure the payment of [here insert the sum for which the mortgage is granted or the notes or other evidences of debt, or description thereof, sought to be secured, also the date of payment].

General Statutes of 1909, § 5196.

The said mortgage shall be deemed and held to be a good and sufficient mortgage, with warranty of a perfect title in the grantor and against all previous incumbrances. If the words "and warrants" are omitted in the above form, the mortgage shall be good without warranty. Ibid.

1361. Deed of Trust, with Warranty.

THIS INDENTURE, made this day of , 19 , between , of county, in the state of , of the first part, and , of county, in the state of , of the second part, and , of county, in the state of , of the third part:

WITNESSETH, that said part of the first part, in consideration of the sum of dollars, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto said part of the second part, successors and assigns, all the following-described real estate, situated in the county of , and state of , to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever, in fee; in trust, nevertheless, and to and for the uses, interests and purposes hereinafter limited, described and declared — that is to say, in trust, to . And said part of the first part do hereby covenant, promise and agree that the within-described premises are free, clear, and discharged of and from all encumbrances, of whatever nature or kind soever; and that will warrant and forever defend the same unto said parties of the second and third parts, their heirs and assigns, against said part of the first part, heirs, and all and every person or persons whomsoever lawfully claiming or to claim the same: and the said part of the second part covenant faithfully to perform and fulfill the trusts herein created.

IN WITNESS WHEREOF, the said parties have hereunto set their hands, the day and year first above written.

[*Signatures and seals.*]

Executed in presence of

[*Signatures.*]

KENTUCKY.

1362. Mortgage.

THIS INDENTURE, made and entered into this day of , 19 , between , of the first part, and , of the second part:

WITNESSETH, that the party of the first part, for and in consideration of his indebtedness to the party of the second part as follows: , and to secure the payment of the same, granted, bargained, and sold, and by these presents grant, bargain, and sell, to the party of the second part all of the following described real estate: [*description*] To have and to hold to said party of the second part, heirs and assigns forever, with general warranty.

THIS INDENTURE IS CONDITIONED AS FOLLOWS: Whereas, the said is indebted to the said as aforesaid.

Now, if said shall pay said indebtedness at maturity, then this indenture shall be void, else remain in full force. And should said indebtedness, or any part thereof, be collected by legal or equitable proceedings, or be paid after the institution of such proceedings, then said to pay all

expenses of collection; including reasonable attorney's fees and commission incurred by the party of the second part or assigns, and which or assigns may have paid or be liable to pay on account of such legal or equitable proceedings. And it is expressly stipulated and agreed, that the lien of this mortgage shall extend to and include such expenses, attorney's fee and commission, and that the same shall be included in any judgment or decree rendered for a foreclosure of this mortgage.

WITNESS, our hands and seals the day and year first above written.

[Signatures and seals.]

1363. Warranty Deed, with Lien.

THIS DEED, between _____, of the first part, and _____, of the second part, WITNESSETH, that the said party of the first part, in consideration of _____, to secure which deferred payment a lien is hereby retained upon the property hereinafter described, do hereby sell, grant, and convey to the party of the second part, _____ heirs and assigns, the following described property, viz.: [description]:

To HAVE AND TO HOLD the same, with all the appurtenances thereon, to the second party, _____ heirs and assigns forever, with covenant of "General Warranty."

IN TESTIMONY WHEREOF, witness our signatures, this _____ day of _____, 19 _____.

[Signatures.]

1364. Mortgage, Full Form.

THIS INDENTURE, made the _____ day of _____, A. D. on thousand nine hundred and _____, by and between _____, of _____, party of the first part, and _____, of _____, party of the second part:

WHEREAS, the said party of the first part is justly indebted to the said party of the second part in the sum of _____ dollars, lawful money of the United States, secured to be paid by a certain bond or obligation bearing even date with these presents in the penal sum of _____ dollars, lawful money, as aforesaid, conditioned for the payment of said first-mentioned sum of _____ dollars, on the _____ day of _____, together with interest thereon at the rate of _____ per cent. per annum, as by the said bond and obligation and the conditions thereof, reference being thereto had, will more fully appear:

NOW THIS INDENTURE WITNESSETH: That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of _____ dollars to the said party of the first part in hand paid by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, and to heirs and assigns forever [here insert description], and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of said party of the first part of, in and to the same, and every part and parcel thereof, with the appurtenances:

TO HAVE AND TO HOLD the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, heirs and assigns, to own proper use, benefit, and behoof forever.

PROVIDED ALWAYS, and these presents are upon this express condition that if the said party of the first part, heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, heirs, executors, administrators, and assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time and in the manner mentioned in the said condition, and according to the true intent and meaning thereof, that then these presents and the estate hereby granted shall cease, determine and be void.

And the said party of the first part, heirs, executors, and administrators, does covenant and agree to pay unto the said party of the second part, heirs, executors, administrators, or assigns, the said sum of money and interest, as mentioned above, and expressed in the condition of said bond, and if default shall be made in the payment of said sum of money, or the interest that shall accrue thereon, or of any part thereof, or of the taxes or assessments on the premises hereby granted, and if the same shall remain unpaid and in arrears for the space of days, then and from thenceforth, that is to say, after the lapse of days, the aforesaid principal sum of dollars, with all the arrearage of interest thereon shall, at the option of the said party of the second part, heirs, executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said party of the first part does further covenant, grant, promise, and agree, that he, the said party of the first part, shall and will make, execute, acknowledge, and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be devised or required for more fully and effectually conveying the premises above described and hereby granted, or intended so to be, unto the said party of the second part, heirs, executors, administrators, or assigns, for the purpose aforesaid, and unto all and every other person or persons deriving any estate, right, title or interest therein under this indenture, or the said party of the second part, heirs, executors, administrators, or assigns.

And it is further covenanted and agreed by and between the parties hereto, that if default shall be made in the payment of the principal sum mentioned in the condition of said bond, or any part thereof, or of the interest which shall accrue thereon, or any part thereof, or of any taxes or assessments, or any part thereof, or of the interest thereon, or of any part thereof (which said taxes and assessments the said party of the first part hereby agrees to pay), at the respective times specified for the payment thereof, the party of the second part, heirs, executors, administrators, or assigns, shall have the right forthwith, after any such default, to enter upon and take possession of such mortgaged premises, and to receive all rents, issues, and profits thereof, and apply the same, after the payment of necessary charges and expenses on account of this mortgage, and upon the bond accompanying the

same. And the said party of the first part hereby agrees that in case of any default on his part, as aforesaid, he will not set up, claim, or seek or take advantage of any valuation, stay of execution, appraisement or extension laws, which may or might prevent, postpone, hinder, or delay the exercise of the right of the party of the second part, heirs, executors, administrators, or assigns, to enter upon or take possession of, manage, or sell, the mortgaged property, or any part thereof, or the immediate enforcement or foreclosure of this mortgage, or the absolute sale of the said mortgaged premises hereunder, without and free from appraisement, valuation, stay or other condition or hindrance, but will and does hereby waive the benefit of any and all such valuation, stay, appraisement, or other laws to such effect, as aforesaid.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

In the presence of

[Signatures and seals.]

LOUISIANA.

See Form No. 1558.

1366. Mortgage.

STATE OF LOUISIANA. }
PARISH OF . }

BE IT KNOWN AND REMEMBERED, that on this, the day of , 18 , before me, the undersigned officer, duly commissioned and qualified, in accordance with law and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared , and , duly aided, assisted, and authorized by her said husband , and also further authorized by the judge of the Judicial District Court of the state of Louisiana, resident of the parish of , state of Louisiana, hereinafter called the appearer , and declared and said to me that whereas do stand justly and truly indebted *in solido* unto the Company, of , a corporation hereinafter called the mortgagee, which said indebtedness is for money loaned, and is evidenced by the following described promissory note : for the sum of dollars , all payable according to the terms and with the interest, and at the times stated in said note . The said note (and each of them) being dated the day of , , and payable in gold coin of the United States of America, of the present standard of weight and fineness, to the said The Company, or order; and executed by , which said note , being presented to me, were by me duly paraphrased "*Ne Varietur*," and countersigned in order to identify them with this act.

Now, therefore, in order to secure the full, prompt, and punctual payment of said note , together with all interest accrued or to accrue thereon, together with all costs and charges, in which are included attorney's fees at 10 per cent., as hereinafter fixed and specified, the appearer ha mortgaged, hypothecated, and affected, and do by these presents specially hypothecate, mortgage, and affect, to and in favor of the mortgagee, its successors, assigns, or any future holder or holders (or any one or more of them), of said note

hereby secured, all and singular, the following described real estate in the parish of _____, in the state of Louisiana, to wit: [*here insert description*], together with all the buildings, improvements, appurtenances, and privileges thereunto belonging, or in anywise appertaining, as well as the machinery now upon or which may hereafter be put upon said premises, whether attached or detached.

Whatever may be the form of said note, it is hereby agreed that all of the above-described property is bound for the full payment of said note, and of every one and of all them in full, and it is hereby specially understood and agreed that the said indebtedness is, no matter what its form, to be considered and held as an indebtedness *in solido* and as binding all parties hereto for the full payment of the same.

The said property is to remain mortgaged and hypothecated, and all waivers, agreements relating to executory process or confession of judgment contained in this instrument, covenants and stipulations to remain in full force and effect, until the full and final payment of the said note in capital and interest, and of all sums due or which may become due under this mortgage, the said appearer hereby binding _____ and _____ heirs not to alienate, deteriorate, or encumber the same to the prejudice of these presents, which are accepted by said mortgagee.

And the said appearer further declared and covenanted with the said mortgagee, its successors and assigns, that _____ had good right and lawful authority to grant, bargain, sell, alien, convey, and mortgage the property before described; that it is free and clear from all incumbrances; that _____ had an indefeasible title to the same in fee simple, which _____ will warrant and defend.

And said appearer declared and said that _____ had agreed, and do hereby specially covenant and agree to the faithful fulfillment of the following stipulations in favor of the mortgagee, its successors and assigns, to wit:

First. To pay the sum of money and interest, as above specified.

Second To keep the buildings on said premises insured in the aggregate for _____ dollars, distributed as follows: _____ dollars on dwelling; _____ dollars on gin-house and machinery; _____ dollars on barn; _____ dollars on _____; _____ dollars on _____; in companies acceptable to and with loss payable to the mortgagee, its successors or assigns (and have the loss on all other policies on said premises made payable to the mortgagee, its successors or assigns); and to deliver all of said policies to the mortgagee, its successors or assigns, and to pay, before the same shall become delinquent, all taxes and assessments that may be laid within the state of Louisiana upon said premises, or any part thereof, or upon the interest of the mortgagee in the said premises, or upon the note or debt secured hereby while held by a non-resident of the state of Louisiana.

But in the event any taxes are assessed and laid on the interest of the mortgagee in the said premises, or on the note or debt secured hereby, the appearer shall not be bound therefor, if, and upon the condition that, the mortgagee may not legally under the laws of the state of Louisiana contract for the payment by the appearer of such taxes in full, to exonerate it therefrom, according to the terms and provisions of this instrument. Yet, if the mortgagee may not legally under the laws of said state, contract for the pay-

ment by the appearer of the entire amount of such taxes, but may for any part thereof, then the appearer shall be bound to pay to the extent that it is legal to do so. The mortgagee maintains that it can legally contract for this exoneration in full, but desiring to avoid any infraction of the laws of the state, the intent and purpose of the parties to this instrument is to bind the appearer in this regard, as above stipulated, only by a valid and legal obligation.

And in case of failure so to pay said taxes or assessments, or so to insure and so to deliver such policies; or in case there exists any claim, lien, or incumbrance upon the said premises, which is prior to this mortgage, then the said mortgagee, its successors or assigns may effect such insurance, and may pay such taxes or assessments (and in case of sale may redeem said property), and may pay such claim, lien, or incumbrance, and the amounts so paid shall be immediately due and payable, and shall be deemed a part of this act of mortgage, and the property hereinbefore hypothecated shall be deemed subject, and is hereby specially made subject, to the same and the interest thereon, which is hereby fixed at 8 per cent. per annum, from the date of payment of such amounts: provided, however, that none of the above provisions shall be construed as obligatory upon the mortgagee, or its successors or assigns, or as making the mortgagee, or its successors or assigns, liable for loss, damage, or injury which may result from the non-insurance of said buildings or other failure.

Provided, however, that in case any money is recovered on account of loss under such insurance policies, such money may, at the option of the said mortgagee, its successors or assigns, be either paid to the insured or applied upon the items of indebtedness secured hereunder, whether such items be due or not, in such order as the mortgagee or its assigns may direct.

Third. In case of default in the payment of any one of the installments of principal or interest of the said note, or in case of the violation of any one of the above conditions, agreements, or covenants; or in case any tax or assessment is assessed within the said state of Louisiana against the mortgagee's interest in the said premises, or against the debt or note secured hereunder while held by a non-resident, that then, and in either or any such case, all of the note remaining unpaid at such time, and all the interest thereon, shall, at the option of the holder or holders thereof, and without any notice to the appearer, become due and payable.

Fourth. To permit no waste, to keep all the improvements in as good repair as they are now, and to do or permit to be done to said premises nothing that may in any way impair or weaken the security under this mortgage.

Fifth. That in case the said note, or any one or more of them, are not promptly paid at maturity, or when the same become due under any of the provisions in said note or in this mortgage; or in case any moneys paid by the mortgagee or its assigns for taxes, insurance, or other purposes hereunder, shall not be paid when due; or in case of the violation of any one of the agreements or covenants contained herein, then, in either or any such case, it shall be lawful for, and the said appearer do hereby authorize the said mortgagee, its successors or assigns, or any other holder or holders of said note or of any one or more of them, to cause all and singular the property

hereinbefore described and herein mortgaged, to be seized and sold under executory process (issued by any competent court), without appraisalment, to the highest bidder, payable in cash.

The said appearer herein dispensing with all and every appraisalment thereof, and by these presents waiving and renouncing the benefit of appraisalment and of all laws or parts of laws now existing, or which may hereafter be enacted, relative to the appraisalment of movable or immovable effects seized and sold under executory or legal process, and also expressly waiving and renouncing the benefits of all laws that may be hereafter enacted, in any way extending the time for the enforcement of the collection of the debt hereby secured, or creating or extending a period of redemption from any sale made in collecting said debt; and agreeing that the laws of the state of Louisiana, save as above excepted, now in force relative to the collection of the debt hereby secured, and the application to the payment thereof of the property hereby mortgaged, are expressly adopted and made a part hereof.

It is further stipulated and agreed by the parties hereto, that the note herein described, and this mortgage and all matters relating to or pertaining to this loan, shall be governed and construed by and under the laws of the state of Louisiana, where the money loaned is to be used, without regard to where the mortgage may be executed or delivered, or the payment of the note made.

And the said appearer hereby confess judgment in favor of said mortgagee, its successors or assigns, and such person or persons as may be the holder or holders of said note, or any one or more of them, for the full amount hereof, capital and interest, together with any and all moneys paid by the mortgagee or its assigns, under any of the provisions of this mortgage, and together with all costs, charges, and expenses whatsoever.

Sixth. To pay and to reimburse to said mortgagee, its successors or assigns, or any holder or holders of said note, or any one or more of them, all such lawyer's or attorney's fees, together with all such costs, charges, and expenses as said mortgagee, its successors or assigns, or any holder or holders of said note, or any one or more of them, shall or may incur or pay in the event of legal proceedings, as provided herein, or other legal proceedings, or in the event of any legal proceedings being instituted at any time for the protection or preservation of the rights of said mortgagee, its successors or assigns, or any holder or holders of said note, or any one or more of them, said attorney's fees, however, being fixed at 10 per cent. on the amount so in suit.

Now, in order to secure the faithful performance of the foregoing obligations and the reimbursement and payment of said lawyer's and attorney's fees, costs, charges, and expenses aforesaid, and the reimbursement and payment of all moneys paid by the said mortgagee, its successors or assigns, or any holder or holders of said note, or any one or more of them, for insurance or for taxes or assessments, or for other purposes, under the provisions of this mortgage, together with interest on all such moneys, the said appearer do by these presents further specially mortgage and hypothecate the hereinbefore described property unto and in favor of said mortgagee, its successors and assigns, and all holders of said note or any one or more of them, the amount

of the mortgage granted for the reimbursement and payment of any and all premiums for insurance, taxes, and assessments being hereby fixed at dollars, and said appearer further declare that confess judgment for the amount of said note, with interest, as aforesaid, and all costs, charges, and expenses, and attorney's fees, as aforesaid, and do waive citation of all legal delays, as well as appeals and writs of error, this being answer and acknowledgment of all indebtedness, as aforesaid, as also formal waiver of legal notice and rights of appeal, hereby authorizing and empowering the holder or holders of said note, or any one or more of them, upon default, at once to enter judgment before any court of competent jurisdiction, without any citation or previous notice of any kind, on a mere production of an authentic copy of this act, for the whole or part of said indebtedness, attorney's fees, costs, charges, and expenses, premiums of insurance, and taxes paid, as aforesaid; also, that in case a forced sale should become necessary from any cause whatever, whether from failure or inability to pay, or otherwise, said appearer do by these presents waive and acknowledge legal service of notice to pay, notice of seizure, notice to appoint an appraiser, and do further waive all legal delays and consent to the immediate execution of the judgment which may have been entered, hereby promising that no injunction or process of law tending to delay a sale shall be resorted to by or by any one holding under, and renouncing such right or privilege; and it is expressly agreed and understood by and between the parties hereto, that the holder of said note, or of any one or more of them, shall have the exclusive right to apply all payments of money made to him or them to the payment of any of the items of indebtedness now due or which may hereafter become due, to said holder or holders, in such order or priority as the said holder or holders may elect.

And it is expressly agreed that, by or because of any extension or extensions of the time of payment of any or of all of the indebtedness secured hereby, or by or because of any payment made to said assured, as aforesaid, of any sum of insurance, the first lien hereunder and the effect of this mortgage shall not in anywise be altered or diminished, in favor of any junior incumbrancer or other party hereafter acquiring a lien on or interest in said real estate, or any part thereof, but that the first lien under this mortgage, on all said land, shall continue until all sums, interest, and charges, as above provided, are fully paid.

And it is further expressly agreed that in the event that said mortgagor sells, assigns, leases, or otherwise parts with the title to, or the possession of, the property mortgaged, or any part thereof; or in the event that said mortgagor should make, or attempt to make, a cession of his property, or a provisional or definitive syndic should be appointed for his property, or should apply for or obtain a respite from his debts, or should there be a voluntary or forced respite from the debts of said mortgagor, or should the mortgagor or mortgagors, or either or any of them, depart this life, then in the happening of any of the above events, the whole amount of the indebtedness hereinabove referred to and hereby secured shall, at the election of the Company, or the legal holder or holders of any or all of said note, without notice, become due and exigible.

MAINE.**1367. Mortgage Deed.**

KNOW ALL MEN BY THESE PRESENTS, that _____ of _____ of the county of _____, in the state of _____, in consideration of _____ dollars paid by _____ of _____, the receipt whereof _____ do hereby acknowledge, _____ do hereby give, grant, bargain, sell, and convey unto the said _____, his heirs and assigns forever, all that parcel of land [*here insert description*].

To HAVE AND TO HOLD the above-granted and bargained premises with all the privileges and appurtenances thereof, to the said _____, his heirs and assigns, to _____ use and behoof forever. And _____ do covenant with the said grantee, his heirs and assigns, that _____ lawfully seized in fee of the premises, and they are free of all incumbrance; that _____ ha _____ good right to sell and convey the same to the said grantee to hold as aforesaid; and that _____ and _____ heirs shall and will warrant and defend the same to the said grantee, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, that if _____ of said _____, _____ heirs, executors, administrators, or assigns, pay to the same _____, his heirs, executors, administrators, or assigns, the sum of _____ dollars, in _____ years from the day of the date hereof, with interest on said sum at the rate of _____ per centum per annum, payable _____ annually until the said sum is wholly paid, then this deed as also _____ certain promissory notes bearing even date with these presents, given by _____ of said _____ to the said _____ to pay the sum and interest at the time aforesaid shall _____ be void, otherwise shall remain in full force. And _____ the said grantor hereby covenants and agrees with the said grantee, that the right of redeeming the above mortgaged premises shall be forever foreclosed in one year next after commencement of foreclosure proceedings in any mode prescribed by statute for the foreclosure of mortgages on real estate.

IN WITNESS WHEREOF, _____, the said grantor, and _____, wife of the said grantor, in testimony of _____ relinquishment of all _____ right of dower in the above-described premises ha _____ hereunto set _____ hands and seals, this _____ day of _____, 19 _____.

Signed and sealed in the presence of _____ [*Signatures and seals.*]

MARYLAND.

When lands or chattels real are sold and conveyed and a mortgage is given by the purchaser at the same time to secure the payment of the purchase money, in whole or in part, such mortgage shall be preferred to any previous judgment or decree for the payment of money which may have been obtained against such purchaser, whether the mortgage is given to the vendor of the property so purchased or to a third party who advances the purchase money in whole or in part; provided, such mortgage recite that the sum so secured is in whole or in part the purchase money of the property purchased. Public General Laws of 1904, p. 1544, art. 66. § 4.

No mortgage shall be valid except as between the parties thereto, unless there be endorsed thereon an oath or affirmation of the mortgagee that the consideration in said mortgage is true and bona fide as therein set forth; and unless there be endorsed on all mortgages executed since March 27, 1902,

the following additional oath or affirmation, to wit: "that the mortgagee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor to pay the tax levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage." This affidavit may be made at any time before the mortgage is recorded, before anyone authorized to take the acknowledgment of a mortgage, and the affidavit shall be recorded with the mortgage. *Ibid.*, p. 511, art. 21, § 30.

1368. Mortgage on Real Property, Statutory Form.

(Pub. General Laws, art. 21, § 60.)

THIS MORTGAGE, made this day of by me , WITNESSETH: That in consideration of the sum of dollars, now due from me, the said , to , I, the said , do grant unto the said , [*here describe the property*]; provided, that if I, the said , shall pay, on or before the day of , to the said , the sum of dollars, with the interest thereon from , then this mortgage shall be void.

WITNESS my hand and seal.

[SEAL.]

1369. Deed of Trust to Secure Debts, Indemnify Sureties, or Other Purposes.

THIS DEED, made this day of , in the year , by me, , WITNESSETH, that whereas [*here insert the consideration for making the deed*], I, the said , do grant unto as trustee, the following property [*here describe the property*], in trust for the following purposes [*here insert the purposes of the trust, and any covenant that may be agreed upon*].

WITNESS my hand and seal.

Test:

A. B.

[SEAL.]

Ibid., Art. 21, § 55.

1370. Mortgage Fee — County.

THIS MORTGAGE, made this day of , in the year nineteen hundred and , by me, , WITNESSETH, that in consideration of the sum of dollars now due from me to , I, the said , do grant unto the said : [*description of property*]

TOGETHER with the buildings and improvements thereon and the rights, roads, ways, waters, privileges, appurtenances and advantages, thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the aforesaid parcel of ground and premises unto and to the proper use and benefit of , heirs and assigns forever.

PROVIDED that if the said , heirs, personal representatives or assigns, shall well and truly pay or cause to be paid the aforesaid sum of dollars, and all interest thereon accrued, when and as the same may be due and payable, and shall perform all the covenants herein on their part to be performed, then this mortgage shall be void.

AND it is agreed that, until default be made in the premises, the shall possess the aforesaid property upon paying in the meantime, all taxes

and assessments, public debts and charges of every kind, levied or assessed, or to be levied or assessed on said hereby mortgaged property, which taxes, assessment, public dues, charges, mortgage debt and interest, the said , for , heirs, personal representatives and assigns, do hereby covenant to pay when legally demandable. But if default be made in payment of said money, or the interest thereon to accrue, or in any part of either of them, at the time limited for the payment of the same, or in any agreement; covenant or condition of this mortgage, then the entire mortgage debt shall be deemed due and demandable; and it shall be lawful for the said , personal representatives and assigns, or , their attorney or agent, at any time after such default, to sell the property hereby mortgaged, or so much thereof as may be necessary, to satisfy and pay said debt, interest and all costs incurred in making such sale, and to grant and convey the said property to the purchaser or purchasers thereof, his, her or their heirs or assigns, and which sale shall be made in the manner following; viz.: upon giving twenty days' notice of the time, place, manner and terms of sale, in some newspaper printed in county, and such other notice as by the said mortgagee, personal representatives or assigns may be deemed expedient; and in the event of a sale of said property, under the powers hereby granted, the proceeds, arising from such sale, to apply: first, to the payment of all expenses incident to such sale, including a fee of dollars and a commission to the party making sale of said property equal to the commission allowed trustees for making sale of property by virtue of a decree of a court having equity jurisdiction in the state of Maryland, secondly, to the payment of all claims of the said mortgagee, personal representatives and assigns under this mortgage, whether the same shall have matured or not; and the surplus (if any there be) shall be paid to the said mortgagor . personal representatives or assigns, or to whoever may be entitled to the same.

AND the said mortgagor for , heirs, personal representatives and assigns, do hereby covenant and agree that immediately upon the first insertion of the advertisement or notice of sale as aforesaid under the powers hereby granted, there shall be and become due by them to the party inserting said advertisement or notice, all expenses incident to said advertisement or notice, all court costs and all expenses incident to the foreclosure proceedings under this mortgage and a commission on the total amount of the mortgage indebtedness, principal and interest, equal to one-half the percentage allowed as commissions to trustees making sale under orders or decrees of the circuit court for county in equity, which said expenses, costs and commission the said mortgagor for heirs, personal representatives and assigns do hereby covenant to pay; and the said mortgagee, personal representatives or assigns, or , their said attorney, shall not be required to receive the principal and interest only, of said mortgage debt in satisfaction thereof, unless the same be accompanied by a tender of the said expenses, costs and commission, but said sale may be proceeded with unless, prior to the day appointed therefor, legal tender be made of said principal, interest, costs, expenses and commission.

AND the said , for personal representatives and assigns, do further covenant to insure, and pending the existence of this mortgage, to

keep insured in some good company satisfactory to the said mortgagee, personal representatives and assigns, the improvements on the hereby mortgaged land to the amount of at least dollars, and to cause the policy to be affected thereon, to be so framed or indorsed, as in case of fire, to inure to the benefit of the said mortgagee, personal representatives and assigns, to the extent of their lien or claim hereunder, and to deliver said policy or policies to the said mortgagee, personal representatives and assigns.

WITNESS the hand and seal of the said mortgagor.

[Signatures and seals.]

TEST:

[Signature.]

STATE OF MARYLAND, }
County, } to wit:

I HEREBY CERTIFY, that on this day of , in the year nineteen hundred , before me, , of the state of Maryland, in and for the county aforesaid, personally appeared , the mortgagor named in the foregoing mortgage and acknowledged the foregoing mortgage to be act. At the same time also appeared , and made oath in due form of law, that the consideration set forth in said mortgage is true and bona fide as therein set forth. And did also make oath in due form of law (or did solemnly and truly declare and affirm) that the mortgagee has not required the mortgagor, h agent or attorney, or any person for the said mortgagor to pay the tax levied upon the interest covenanted to be paid in advance, nor will h require any tax levied thereon to be paid by the mortgagor, or any person for during the existence of this mortgage.

[Signature.]

MASSACHUSETTS.

1371. Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of , paid by , the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said [here insert description]:

TO HAVE AND TO HOLD the granted premises, with all the privileges and appurtenances thereto belonging, to the said and heirs and assigns, to their own use and behoof forever.

AND hereby, for and heirs, executors, and administrators, covenant with the grantee and heirs and assigns that lawfully seized in fee simple of the granted premises; that they are free from all incumbrance; that have good right to sell and convey the same as aforesaid; and that will, and heirs, executors, and administrators shall, warrant and defend the same to the grantee and heirs and assigns forever against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, that if , or heirs, executors, administrators, or assigns, shall pay unto the grantee, or executors, administrators, or assigns, the sum of in years from this date, with interest semi-annually at the rate of per cent. per annum, and until such pay-

ment shall pay all taxes and assessments, to whomsoever laid or assessed, whether on the granted premises, or on any interest therein, or on the debt secured hereby; shall keep the buildings on said premises insured against fire in a sum not less than dollars for the benefit of the grantee and executors, administrators, and assigns, in such form and at such insurance offices as they shall approve, and, at least two days before the expiration of any policy on said premises, shall deliver to , or them, a new and sufficient policy to take the place of the one so expiring; and shall not commit or suffer any strip or waste of the granted premises, or any branch of any covenant herein contained; then this deed, as also note of even date herewith, signed by , whereby promise to pay to the grantee or order the said principal sum and installments of interest at the times aforesaid, shall be void.

BUT UPON ANY DEFAULT in the performance or observance of the foregoing condition, the grantee , or executors, administrators, or assigns, may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release hereof, together with all improvements that may be thereon, by public auction in said , first publishing a notice of the time and place of sale once each week for three successive weeks in some one newspaper published in said , and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar and all persons claiming under from all right and interest in the granted premises, whether at law or in equity. And out of the money arising from such sale the grantee or representatives shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them by reason of any default in the performance or observance of the said condition, rendering the surplus, if any, to or heirs or assigns; and hereby, for and heirs and assigns, covenant with the grantee and heirs, executors, administrators, and assigns that, in case a sale shall be made under the foregoing power, or they will upon request execute, acknowledge, and deliver to the purchaser or purchasers a deed or deeds of release confirming such sale.

AND IT IS AGREED that the grantee , or executors, administrators, or assigns, or any person or persons in , or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase money; and that, until default in the performance of the condition of this deed, and heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof.

And for the consideration aforesaid do hereby release unto the grantee and heirs and assigns all right of or to both dower and homestead in the granted premises.

IN WITNESS WHEREOF, the said hereto set hand and seal this day of in the year one thousand nine hundred and ninety-

Signed and sealed in presence of

[Signatures and seals.]

MICHIGAN.

A mortgage of lands in the form prescribed in this section shall be deemed and held to be with warranty of perfect title in the grantor, and against all previous incumbrances. And if in the said form the words "and warrant" be omitted, the mortgage shall be good, but without warranty. Compiled Laws of 1897, § 9017.

No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage. Ibid., § 8960.

1372. Mortgage on Real Property.

(Compiled Laws of 1897, § 9017.)

A. B. mortgages and warrants to C. D. [*here describe the premises*], to secure the repayment of [*here recite the sum for which the mortgage is granted, or notes or other evidences of debt, or a description thereof, sought to be secured, also the date of repayment*].

Dated the day of , .

1373. Mortgage with Interest Clause.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between of the first part, and of the second part, WITNESSETH: That the said part of the first part, for and inconsideration of the sum of to in hond paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, ha granted, bargained, sold, remised, released, enfeoffed, and confirmed, and by these presents do grant, bargain, sell, release, enfeoff, and confirm, unto the said part of the second part, and to heirs and assigns forever, all [*here insert description*].

TOGETHER with the hereditaments and appurtenances thereunto belonging, or in anywise appertaining: To HAVE AND TO HOLD the above-bargained premises unto the said part of the second part, and to heirs and assigns, to the sole and only proper use, benefit, and behoof of the said part of the second part, heirs and assigns forever: PROVIDED ALWAYS, and these presents are upon this express condition, that if the said part of the first part shall and do well and truly pay, or cause to be paid, to the said part of the second part, the sum of :

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of days, then and from thenceforth, that is to say, after the lapse of the said days, the aforesaid principal sum of with all arrearage of interest thereon, shall, at the option of said obligee, executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained

to the contrary thereof in anywise notwithstanding; according to bearing even date herewith, executed by to the said part of the second part, as collateral security, then these presents and shall cease, and shall be null and void. But in case of non-payment of the said sum of , or of the interest thereof, or any part of said principal or interest, at the time, in the manner, and at the place above limited and specified for the payment thereof, then and in such case it shall and may be lawful for the said part of the second part, heirs, executors, administrators, or assigns, and the said part of the first part do hereby empower and authorize the said part of the second part, heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, heirs and assigns forever, good, ample, and sufficient deed or deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering the surplus moneys (if any there should be) to the said part of the first part, heirs, executors, or administrators, after deducting the costs and charges of such vendue and sale aforesaid, and also dollars, as an attorney fee, should any proceeding be taken to foreclose this indenture.

IN WITNESS WHEREOF, the part of the first part ha hereunto set hand and seal the day and year first above written.

Sealed and delivered in presence of [Signatures and seals.]

1374. Mortgage — Committee Form.

THIS MORTGAGE, made the day of , in the year one thousand nine hundred , by , mortgagor, unto , mortgagee,

WITNESSETH, that the said mortgagor, in consideration of the sum of dollars, the receipt of which is acknowledged; and for the purpose of securing the repayment of the said sum, with interest, as hereinafter provided, and the performance of the covenants hereinafter contained, hereby mortgage and warrant unto the said mortgagee, heirs and assigns, the lands, premises and property situated in the , of , county of , and state of Michigan, described as follows, to wit: [*description*] together with the hereditaments and appurtenances thereof.

And the said , mortgagor, for , heirs, executors and administrators, hereby covenant with the said mortgagee, legal representatives and assigns, as follows:

First. Said mortgagor will pay to the said mortgagee, legal representatives and assigns, the said sum of dollars, with interest thereon at the rate of per cent. per annum, payable semi-annually, until the full payment of said principal sum, according to the terms of , bearing even date herewith, executed by to the said mortgagee, and will pay interest at the rate of per cent. per annum, semi-annually, upon all overdue interest or principal from the time of its maturity.

Second. The said mortgagor, within forty days after the same become due and payable, will pay all taxes and assessments which shall be levied upon the said lands, of upon, or on account of this mortgage, or the in-

debtedness secured hereby, or upon the interest or estate in said lands created or represented by this mortgage, or by said indebtedness, whether levied against the said mortgagor, legal representatives or assigns, or otherwise; and said mortgagor hereby waive any and all claim or right against said mortgagee, legal representatives or assigns, to any payment or rebate on, or offset against, the interest or principal of said mortgage debt, by reason of the payment of any of the aforesaid taxes or assessments.

Third. The said mortgagor will also keep all buildings erected and to be erected upon said lands insured against loss and damage by fire, with insurers, and to an amount, approved by the mortgagee, as a further security to said mortgage debt, and assign and deliver to the mortgagee all insurance upon said property.

Fourth. If said mortgagor make default in the payment of any of the aforesaid taxes or assessments, or in procuring and maintaining insurance, as above covenanted, said mortgagee, legal representatives or assigns, may pay such taxes and effect such insurance, and the sums so paid shall be a further lien on said premises under this mortgage, payable forthwith, with interest at the rate of per cent. per annum.

Fifth. Should default be made in the payment of said principal, or interest, or taxes, or insurance premiums, or any part thereof, when the same are payable as above provided, and should the same, or any part thereof, remain unpaid for the period of thirty days, then the aforesaid principal sum, with all arrearages of interest, taxes and insurance premiums, shall, at the option of said mortgagee, legal representatives and assigns, become payable immediately thereafter, although the period above limited for the payment thereof shall not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Sixth. Said mortgagor shall pay to said mortgagee, legal representatives and assigns, the sum of dollars, as a reasonable solicitor fee, in addition to all other legal costs, as often as any proceeding is taken in equity to foreclose this mortgage for default in any of its covenants, which sum shall be an additional lien on said premises.

Seventh. All the aforesaid covenants shall run with the land.

Eighth. Upon default being made in any of the aforesaid covenants, the said mortgagee, legal representatives and assigns, are hereby authorized and empowered to grant, bargain and sell, release and convey the said premises, property and appurtenances, at public vendue, and to execute and deliver to the purchasers at such sale, good and sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering any surplus moneys, after payment of the moneys due hereon, the attorney fee provided by law, and the costs and charges of such vendue and sale, to the said mortgagor, heirs, legal representatives and assigns.

IN WITNESS WHEREOF, the said mortgagor ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of
[Signatures.]

MINNESOTA.

Also good for North and South Dakota. For forms of notes, see Forms Nos. 1559-1561.

1375. Mortgage Deed.

THIS INDENTURE, made this day of in the year of our Lord one thousand , between , of county, part of the first part, and the Company, a corporation, of , party of the second part, WITNESSETH: That the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, and convey to the said party of the second part, its successors and assigns forever, all that certain real estate lying and being in the county of , and state of , described as follows, to wit: '[*description.*]

TO HAVE AND TO HOLD THE SAME, together with the appurtenances thereunto belonging,* unto the said party of the second part, its successors and assigns forever. And the said part of the first part do covenant with the said party of the second part, its successors and assigns, as follows: That he lawfully seized in fee simple of said premises; that he ha good right to convey the same; that the same are free from all incumbrances, and that the said part of the first part will warrant and defend the title to the same against all lawful claims.

And, in consideration aforesaid, the part of the first part do hereby relinquish and convey all right of homestead and all contingent rights and claims whatsoever in and to the said premises; and do hereby expressly waive or renounce the benefit of all laws, that may be hereafter enacted, providing for an appraisalment before sale of any of the property hereby granted, commonly known as "appraisalment laws," and also the benefit of all laws, that may be hereafter enacted, in any way extending the time for the enforcement of the collection of the debt hereby secured, or creating or extending a period of redemption from any sale made in collecting said debt, commonly known as "stay laws," and "redemption laws," and do hereby agree and contract that the laws of this state, save as above excepted, now in force relative to the collection of the debt hereby secured and the application to the payment thereof of the property hereby conveyed, are expressly adopted and made a part of this contract.

PROVIDED, NEVERTHELESS, that if the said part of the first part, heirs, executors, or administrators, shall pay to the said party of the second part, or its successors or assigns, dollars, according to the terms and conditions of the following promissory note , to wit: note for the sum of dollars due on the first day of in the year , with interest at the rate of per cent. per annum until paid and with 10 per cent. interest per annum on all interest installments from the time when due until paid.

Said note being dated the day of , , executed by , and payable to the said party of the second part, or order, in gold coin of the

United States of America of the present standard of weight and fineness, and shall also keep and perform all and singular the covenants and agreements herein contained, then this deed to be null and void, otherwise to remain in full force and effect.

And the said part of the first part do covenant and agree with the said party of the second part, its successors and assigns, to pay the said sum of money and interest as above specified; to pay, as a part of the debt hereby secured, in case of each or any foreclosure of this mortgage, all costs and expenses and dollars, as an attorney's fee, in addition to all sums and costs allowed in that behalf by law; to permit no waste, especially of timber, and to do, or permit to be done, to said premises, nothing that may in any way impair or weaken the security under this mortgage; to keep the buildings on said premises insured for dollars, in companies acceptable to and with loss payable to the mortgagee or its assigns; to have the loss on all other policies on said buildings made payable to the mortgagee or its assigns, and to deliver all of the said policies to the mortgagee or its assigns; and to pay, before the same shall become delinquent, all taxes and assessments that may be laid within the state of upon said premises, or any part thereof, or upon the interest of the party of the second part in the said premises, or upon the notes, or debt secured hereby, while held by a non-resident of the said state of

But in the event any taxes are assessed and laid on the interest of the party of the second part in the said premises, or on the notes or debt secured hereby, the part of the first part shall not be bound therefor, if, and upon condition that the party of the second part may not legally, under the laws of the state of , contract for the payment by the part of the first part of such taxes, in full, to exonerate it therefrom, according to the terms and provisions of this instrument. Yet, if the party of the second part may not legally, under the laws of said state, contract for the payment by the part of the first part, of the entire amount of such taxes, but may for any part thereof, then the part of the first part shall be bound to pay to the extent that it is legal to do so. The party of the second part maintaining that it can legally contract for this exoneration in full, but desiring to avoid any infraction of the laws of the state, the intent and purpose of the parties to this instrument is to bind the part of the first part in this regard as above stipulated, only by a legal and valid obligation. And in case of failure so to insure and so to deliver such policies, or so to pay such taxes or assessments, or in case there exists any claim, lien, or incumbrance upon the said premises, which is prior to this mortgage, the said party of the second part, its successors or assigns, may effect such insurance, and may pay such taxes or assessments, and may pay such claim, lien, or incumbrance; and the sum or sums of money which may be so paid, with interest from the time of such payment at per cent. per annum, shall be deemed and are hereby declared to be a part of the debt secured by this mortgage, and immediately due and payable.

PROVIDED, HOWEVER, that any money received on account of loss under such above insurance policies may, at the option of the party of the second part, its successors or assigns, be either paid to the insured or applied upon

the items of indebtedness secured hereby, whether such items be due or not, in such order as the party of the second part, its successors or assigns, may direct.

And the said part of the first part do further agree that, in case of default in the payment of any one of the installments of principal or interest of said note, or in case of the violation of any one of the above conditions, agreements, or covenants, or in case any tax or assessment is assessed within the said state of against the interest of the said party of the second part in said premises, or against the debt or note secured hereunder, while held by a non-resident, that then and in either or any such case the said party of the second part, its successors or assigns, may elect, without notice, that the whole indebtedness hereby secured shall be immediately due and payable, and may enforce payment thereof by foreclosure of this mortgage or otherwise, and that then, and in either or any such case, the said party of the second part, its successors or assigns, are hereby authorized and empowered to sell the hereby granted premises at public auction, and convey the same to the purchaser in fee simple, and, out of the moneys arising from such sale, to retain the principal of said note and interest, together with all such sum or sums of money as they shall have paid for taxes or assessments, prior liens, incumbrances, or insurance, with interest thereon as hereinbefore provided, and all other sum or sums as shall then be due under the terms of this mortgage, together with all legal costs and charges of such foreclosure, and also dollars, as attorney's fees, and pay the overplus, if any, to said part of the first part. This power shall not be discharged by its exercise in case of any default or violation as aforesaid, but may again be exercised as often as any violation or default shall occur.

And the said part of the first part hereby agree that the purchaser of said premises, upon sale under foreclosure, by advertisement or action, shall be entitled to immediate possession.

And it is agreed that, by any extension or extensions of the time of payment of any or all of the indebtedness secured hereby, the first lien hereunder shall not in anywise be altered or affected in favor of any junior incumbrancer, or in favor of any party hereafter acquiring an interest in, or lien on, said real estate.

IN TESTIMONY WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

Signed, sealed, and delivered in presence of [Signatures and seals.]

1376. Mortgage Deed.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , part of the first part, and , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey, to the said part of the second

part, heirs and assigns, forever, all tract or parcel of land, lying and being in the county of , and state of Minnesota, described as follows, to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said part of the second part, heirs and assigns, forever. And the said , part of the first part, do covenant with the said part of the second part, heirs and assigns, as follows: First, that he lawfully seized of said premises; second, that he ha good right to convey the same; third, that the same are free from all incumbrances, ; fourth, that the said part of the second part, heirs and assigns, shall quietly enjoy and possess the same; and that the said part of the first part will warrant and defend the title to the same against all lawful claims.

PROVIDED, NEVERTHELESS, that if the said , part of the first part, heirs, executors or administrators, shall well and truly pay or cause to be paid to the said part of the second part, heirs, executors, administrators or assigns, the sum of dollars, and interest, according to the condition of , bearing even date herewith, then this deed to be null and void, otherwise to be and remain in full force and effect. But if default shall be made in the payment of said sum of money, or interest, or any part thereof, at the time and in the manner hereinbefore specified for the payment thereof, the said part of the first part in such case do hereby authorize and fully empower the said part of the second part, heirs, executors, administrators or assigns, to sell the said hereby granted premises at public auction, and convey the same to the purchaser in fee simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said , together with all costs and charges, and also the sum of dollars, as attorney's fees, and pay the overplus, if any, to the said part of the first part. heirs, administrators or assigns.

And the said do further covenant and agree, to and with the said part of the second part, heirs, executors, administrators and assigns, to pay said sum of money above specified, at the time and in the manner above mentioned, together with all costs and expenses, if any there shall be, and also in case of the foreclosure of this mortgage, the sum of dollars, as attorney's fees, in addition to all sums and costs allowed in that behalf by law, which said sum is hereby acknowledged and declared to be a part of the debt hereby secured, and which shall be assessed and payable as part of said debt, and that he will pay all taxes and assessments of every nature, that may be assessed on said premises, or any part thereof, previous to the day appointed by law for the sale of lands for town, city, county or state taxes.

IN TESTIMONY WHEREOF, the said part of the first part ha hereunto set hand and affixed seal , the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in presence of

[*Signatures.*]

1377. Mortgage Deed — Coupon Notes.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the county of , and state of , part of the first part, and , of the county of , and state of , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to the said part of the second part, heirs and assigns, forever, all tract or parcel of land lying and being in the county of , and state of Minnesota, described as follows, to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said part of the second part, heirs and assigns, forever. And the said , part of the first part, do covenant with the said part of the second part, heirs and assigns, as follows: First, that he lawfully seized of said premises; second, that he ha good right to convey the same; third, that the same are free from all encumbrances ; fourth, that the said part of the second part, heirs and assigns, shall quietly enjoy and possess the same; and that the said part of the first part will warrant and defend the title to the same against all lawful claims.

PROVIDED, NEVERTHELESS, that if the said , part of the first part, heirs, executors or administrators, shall well and truly pay, or cause to be paid, to the said part of the second part, heirs, executors, administrators or assigns, the sum of dollars, and interest, according to the conditions of one principal mortgage note, made to the order of the part of the second part, payable , 19 , and interest on said sum according to the terms of interest coupon notes: One for the sum of dollars, payable , 19 , and for the sum of dollars each, payable respectively on the days of and in the years 19 , 19 , 19 , and one for the sum of dollars, payable on the day of , 19 , said principal mortgage note and interest coupon notes bearing interest at the rate of per cent. per annum after maturity and until fully paid, bearing even date herewith, and also to pay all taxes which now are, or may be hereafter assessed on said premises as they shall become due, then this deed to be null and void. But if default shall be made in the payment of said sum of money, or the interest, or the taxes, or any part thereof, at the time and in the manner hereinbefore or hereinafter specified for the payment thereof, the said part of the first part, in such case do hereby authorize and fully empower the said part of the second part, heirs, executors, administrators or assigns, to sell the said hereby granted premises, and convey the same to the purchaser, in fee simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on said note , and all taxes upon said lands, together with all costs and charges, and also the sum of dollars as attorney's fees, and pay the overplus, if any, to

the said part of the first part, heirs, executors, administrators or assigns.

And the said do further covenant and agree to and with the said part of the second part, heirs, executors, administrators and assigns, to pay said sum of money above specified at the time and in the manner above mentioned, together with all the costs and expenses, if any there shall be; and, also, in case of the foreclosure of this mortgage, the sum of dollars as attorney's fees in addition to all sums and costs allowed in that behalf by law, which said sum is hereby acknowledged and declared to be a part of the debt hereby secured, and which shall be assessed and payable as part of said debt, and that he will pay all taxes and assessments of every nature that may be assessed on said premises, or any part thereof, previous to the day appointed by law for the sale of lands for town, city, county or state taxes. And if default be made by the said part of the first part, in any of the foregoing provisions, it shall be lawful for the said part of the second part, heirs, executors, administrators or assigns, or attorney, to declare the whole sum above specified to be due and payable.

IN TESTIMONY WHEREOF, the said part of the first part ha hereunto set hand and affixed seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

MISSISSIPPI.

1378. Mortgage or Deed of Trust.

Section 2820 of the Code of Mississippi (1906) provides that a deed of trust or mortgage may be in the form of a conveyance (see p. 794), to the words, "Witness my signature," at the end, and then as follows, viz.:

In trust to secure [*here state what is secured, and all the necessary provisions*].

WITNESS my signature, the day of , A. D. 18 .

MISSOURI.

1379. Deed of Trust.

THIS DEED, made and entered into this day of , nineteen hundred and , by and between , of the county of , state of , part of the first part, , of the county of , state of , part of the second part, and , of the county of , state of , part of the third part, WITNESSETH: That the said part of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to paid by the said part of the second part, the receipt of which is hereby acknowledged, do , by these presents, grant, bargain, and sell, convey and confirm, unto the said part of the second part, the following-described real estate, situate, lying, and being in the county of , and state of Missouri, to wit: [*here insert description*]*

TO HAVE AND TO HOLD the same, with the appurtenances, to the part of

the second part, and to _____, successor or successors in this trust, and to _____ and _____, grantees and assigns forever.

IN TRUST, HOWEVER, for the following purposes:

WHEREAS, _____, the said part _____ of the first part, ha _____ this day made, executed, and delivered to the said part _____ of the third part, _____ promissory note _____, of even date herewith, by which _____ promise _____ to pay to the said _____, or order, for value received, _____ dollars:

NOW, THEREFORE, if the said part _____ of the first part, or any one for _____, shall well and truly pay off and discharge the debt and interest expressed in the said note and every part thereof, when the same become due and payable according to the true tenor, date, and effect of said note _____, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said part _____ of the first part, but, should the said first part fail or refuse to pay the said debt, or the said interest, or any part thereof, when the same or any part thereof shall become due and payable, according to the true tenor, date, and effect of said note _____, then the whole shall become due and payable, and this deed shall remain in force; and the said part _____ of the second part, or in case of _____ absence, death, refusal to act, or disability in anywise, the (then) acting sheriff of _____ county, Missouri, at the request of the legal holder of the said note, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court-house door, in the _____ of _____ county, Missouri, for cash, first giving _____ days' public notice of the time, terms, and place of sale, and of the property to be sold, by advertisement in some newspaper printed and published in the _____ of _____, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and any statement of facts or recital by the said trustee, in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as *prima facie* evidence of such fact; and such trustee shall, out of the proceeds of said sale, pay, first, the cost and expenses of executing this trust, including legal compensation to the trustee for _____ services; and, next, _____ shall apply the proceeds remaining over to the payment of said debt and interest, or so much thereof as remains unpaid, and the remainder, if any, shall be paid to the said part _____ of the first part, or _____ legal representatives. And the said part _____ of the second part covenant _____ faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above written.

[Signature and seal.]

Signed, sealed, and delivered in presence of us.

[Signatures.]

1380. Deed of Trust — Another Form.

[As in the next preceding form to *, continuing thus]: And possession of said premises, is now delivered unto said part _____ of the second part _____.

To HAVE AND TO HOLD the said above described and granted premises, together with all improvements, rights, privileges and appurtenances thereunto

in anywise belonging, unto the said part of the second part, and unto his successor or successors in this trust, and unto his or their grantees and assigns forever.

IN TRUST, however, for the following purposes: WHEREAS, , the said part of the first part, ha this day made, executed and delivered to the said part of the third part certain promissory note of even date herewith, by which promise to pay to the order of the said , for value received, dollars, with interest , from , until paid at the rate of per centum per annum.

Also interest notes of same date each for \$, and maturing in months respectively .

AND WHEREAS, for the further securing the payment of the said promissory note and the interest thereon, the said agreed, and do by these presents for , h heirs and assigns, covenant and agree to and with the said part of the second part as trustee , and for the benefit of the said part of the third part, and assigns, holder or holders of the said promissory note above described as follows:

To cause all taxes and assessments, general and special, now existing against said property to be paid and discharged on demand; and further, that the said covenantor pending this trust shall and will promptly pay and discharge as and when due and payable respectively, all and singular such taxes, levies or assessments, as may or shall be, by any lawful authority whatsoever, levied, assessed or imposed thereon, or against any part thereof; and further, that pending this trust said covenantor shall and will procure and keep up insurance upon the buildings and improvements situated on said premises, in one or more solvent insurance companies or agencies, satisfactory to said trustee, doing business in the of in the of , and state aforesaid, in the sum of at least dollars, the policy or policies of such insurance to be duly assigned on demand to said trustee herein, for the benefit and further security of the holder or holders of said note , with power in trustee to demand, receive and collect any and all moneys becoming payable thereunder, and the same apply toward the payment of said note unless otherwise paid, when become due; and further, that pending this trust said covenantor will at all times promptly pay or cause to be paid, as and when due and payable respectively, all sums requisite, whether of premium or assessment, or otherwise, to procure and keep valid such insurance as above agreed for, and also will keep said premises free from statutory lien claims of every kind. It being further understood and agreed, that in the event of default at any time by said covenantor , in payment as above agreed for, of any sum due or payable for taxes, levies or assessments, or for such insurance, or on any final judgment for any and every statutory lien claim, then such sum or sums may be in or their option advanced and paid by said part of the third part, or assigns, holder or holders of said promissory note , , in which case the sum or sums so advanced and paid shall be a further debt also secured by these presents, and which shall be repaid on demand by said , representative or assigns to the person or persons advancing the same, together with interest thereon at the rate of per centum per annum from date of such advance until repaid.

It is also agreed that when any one note is unpaid days after maturity, all the notes then fall due and are payable immediately at the option of the holder thereof.

Said covenantor shall also keep the property adequately insured against loss by storm or cyclone.

Now, THEREFORE, if the said part of the first part, or any one for or representatives or assigns, shall well and truly pay off and discharge the debt and interest expressed in the said note, and every part thereof, when the same shall become due and payable according to the true tenor, date and effect of said note, and shall well and truly keep and perform all and singular the several covenants and agreements hereinbefore set forth, then this trust, and the lease hereinafter set forth, shall cease and be void, and the property hereinbefore conveyed shall be released at the cost of the said part of the first part; but if said debt or the said interest, or any part thereof, be not so paid when the same or any part thereof shall become due and payable according to the true tenor, date and effect of said note, or if default be made in due fulfillment of said covenants and agreements, or any one of them, then this conveyance shall remain in full force, and the said part of the second part (whether acting in person or by attorney in fact thereunto authorized under seal), or in case of death, refusal to act, or other legal incapacity, the then acting sheriff of the of , in the state of , successor in this trust, may proceed to sell the property hereinbefore conveyed, or any part thereof, at public vendue or outcry at in the of , in the of and state of , to the highest bidder for cash, first giving days' public notice of the time, terms and place of sale, and of the property to be sold, by advertisement published in some newspaper printed in the English language in the of , in the of , state of , and upon such sale shall execute a deed in fee simple of the property sold, to the purchaser or purchasers thereof, and shall receive the proceeds of such sale; and any statement of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser — and in case such sheriff sell, of the happening of any or either of the aforesaid events making him successor herein as aforesaid — shall be received as prima facie evidence of such fact; and the said trustee shall, out of the proceeds of such sale, pay first the cost and expenses of executing this trust, including legal compensation to the trustee for services; and next shall repay to any person or persons who may or shall, under the covenants hereinbefore set forth, have advanced or paid any money for taxes, insurance, or judgments upon statutory lien claims as above provided, all sums so by him or them advanced and not already repaid, together with interest thereon at the rate of per centum per annum from date of such advance till day of repayment; and next shall apply the proceeds remaining over to the payment of said debt and interest, or so much thereof as remains unpaid; and remainder of such proceeds of sale, if any, shall be paid to the said or legal representatives. And said part of the first part for and heirs, executors, administrators and assigns, and in con-

sideration of the premises, hereby expressly waive all right to redeem any of the property hereinbefore described, that shall be sold according to the terms of this deed, by said trustee, or any one representing said trustee. And the said part of the second part covenant faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

And the said part of the second part hereby lease said premises to said, the said part of the first part, until a sale be had under the foregoing provisions therefor, upon the following terms as condition thereof, to wit: The said, and every and all persons claiming or possessing such premises or any part thereof, by, through or under shall and will pay rent therefor during said term, at the rate of one cent. per month, payable monthly upon demand, and shall and will surrender up peaceable possession of said premises and any and every part thereof sold under said provisions to said part of the second part, successors, assigns or purchasers thereof under such sale within ten days after the making of such sale, and without notice or demand therefor.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of us:

[Signatures.]

MONTANA.

1381. Mortgage on Real or Personal Property, Statutory Form.

(Revised Codes of 1907, § 5748.)

THIS MORTGAGE, made the day of, in the year, by A. B., of, mortgagor, to C. D., of, mortgagee, WITNESSETH: That the mortgagor mortgages to the mortgagee [*here describe the property*], as security for the payment to him of dollars, on [or before] the day of, in the year, with interest thereon [or, as security for the payment of an obligation, *describing it, etc.*].

A. B.

1382. Mortgage.

THIS MORTGAGE, made and entered into this day of, A. D. 19, by and between, of, mortgagor and, of, mortgagee,

WITNESSETH, that the said mortgagor, for and in consideration of the sum of dollars (\$) in hand, paid by said mortgagee, the receipt of which is hereby acknowledged, do hereby mortgage and confirm unto the said mortgagee and successors and assigns, forever, the hereinafter described real estate, situate, lying and being in the city or town of, county of, and state of. [*description*]

TOGETHER with all and singular the tenements, hereditaments, appurtenances, easements, water and all other rights belonging or in anywise appertaining thereto, unto the said mortgagee and successors and assigns.

The said mortgagor represent to and covenant with the said mortgagee and successors and assigns that he will warrant and defend said premises against the lawful claims of all persons whomsoever, and the said mortgagor each hereby relinquish all right of dower and all right of homestead, accruing or to accrue, in and to all of said premises; and the said mortgagor hereby covenant with the said mortgagee that lawfully "seized" and in possession of said premises and the same is free from all incumbrance excepting .

PROVIDED ALWAYS, that these presents are upon the express condition that if said mortgagor , heirs, executors or administrators, shall pay or cause to be paid to the said mortgagee and successors and assigns, the full sum of dollars, according to the tenor and effect of that certain promissory note or obligation secured hereby, a copy of said note or obligation being as follows: [*here insert*]

Then these presents to be void, otherwise to be and remain in full force and effect.

It is agreed that if the mortgagor or maker or makers of the obligation secured by this indenture shall fail to pay the principal or any interest as the same become due, or any taxes, or assessments or insurance as required, or otherwise fail to comply with any one or all of the conditions of this mortgage, then all of said debt secured hereby shall become due and collectible, and all rents and profits of said property shall then immediately accrue to the benefit of the said mortgagee ; and this mortgage may be foreclosed for the full amount, together with costs, taxes, insurance, cost of abstract of title, attorney's fees, and any and all other sums advanced or expense incurred on account of the said mortgagor , for whatsoever purposes, and any and all advances shall draw interest at the rate of ten per cent. per annum, and be liens under this indenture.

A release of this mortgage is to be made at the expense of the mortgagor , on full payment of the indebtedness secured hereby.

IN WITNESS WHEREOF, the said mortgagor ha hereunto set hand and seal the day and year first above written.

[*Signatures and seals.*]

Signed, sealed and delivered in the presence of

[*Signatures.*]

1383. Mortgage Trust Deed.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , by and between , of the county of , state of Montana, the part of the first part, and of , the county of , state of , the party of the second part, WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm

unto the said party of the second part, his heirs and assigns, forever, all the certain lot, piece or parcel of land situate, lying and being in _____, the county of _____, state of Montana, particularly described as follows, to wit: [*description*] together with all water, water rights, ditches, aqueducts, appropriations and franchises upon, leading to, connected with or usually had and enjoyed in connection with said described premises and each and every part and parcel thereof, whether represented by shares of capital stock in any ditch company or by actual individual ownership or otherwise, or which may hereafter be acquired by the said party of the first part during the existence of this mortgage and used in connection with the said described premises or any part thereof. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

The said part of the first part represent to and covenant with the said party of the second part, his heirs and assigns, that he will warrant and defend said premises against the lawful claims of all persons whomsoever, and the said part of the first part hereby relinquish all right of dower and all right of homestead accruing to or to accrue in and to said premises.

THIS INDENTURE IS INTENDED AS A MORTGAGE to secure the payment of [*describe terms of debt*].

It is agreed that if the part of the first part fail to pay said principal or interest or any part thereof when due, or any taxes, assessments or insurance premium as hereinafter provided, or fail to comply with any one of the conditions of this mortgage, then all of said debts shall, at the option of the party of the second part, become due and collectible and all rents and profits of said property shall then immediately accrue to the benefit of said party of the second part, and the occupants of said property shall pay rent to the said party of the second part or his agent, and this mortgage may be foreclosed for the full amount together with costs, taxes, insurance premium and a reasonable attorney's fee for plaintiff's attorney to be fixed and allowed by the court, and any other and all sums advanced or expenses incurred on account of said part of the first part for whatsoever purposes paid; and any advances paid shall draw interest at the rate of _____ per cent. per annum and be liens under this mortgage. In case of foreclosure hereof the cost of an abstract of title shall be taxed as a part of the costs in the case and paid by the part of the first part, and the plaintiff in such foreclosure suit shall be entitled upon his demand, and without the necessity of showing any cause therefor, to have a receiver appointed to take charge of said property and to collect the rents and profits thereof and with the same powers as if appointed under statutory provisions; and the said party of the second part may be appointed such receiver. The omission of the party of the second part to exercise the option herein provided for at any time or times shall not preclude said party of the second part from the exercise of such option at any subsequent default or defaults of the part of the first part in payment as aforesaid. And said party of the second part is not required to give any notice as to the exercise of said option but may proceed at any time or times after any default shall have occurred, to sell the property herein described and collect the amounts due hereunder, or at his option to institute suit for the foreclosure hereof in the courts in the ordinary way, it being expressly understood and agreed that in case of default

the said party of the second part, or in case of his absence, death, refusal to act, or disability in any wise, the (then) acting sheriff of _____ county, Montana, at the request of the legal holder of said note, may proceed to sell the property hereinabove described, or any part thereof, at public vendue, to the highest bidder, at the front door of the court-house, in the said _____ county, Montana, for cash, of which sale at least twenty days' notice of the time, terms and place of sale, and of the property to be sold, shall be advertised in some newspaper, printed and published in the said _____ county, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and the moneys realized from such sale shall, after payment of the costs, charges, expenses of said sale, including reasonable attorney's fees and the repayment of all sums of money advanced by the party of the second part, his heirs or assigns, be applied to the payment of the indebtedness hereby secured.

It is further agreed that until said debt is fully paid the part _____ of the first part shall keep all legal taxes and assessments against said property and the interest of the party of the second part or his assigns therein by virtue of these presents, fully paid and shall keep all insurance in a reliable insurance company or companies to the amount of at least _____ dollars on the buildings on the described premises for the benefit of the said party of the second part, his heirs and assigns, and to deliver to the said party of the second part or his agent said policy or policies of insurance and renewals thereof to be held until said debt is fully paid, and it is hereby made a part of this instrument that said insurance shall be in company or companies satisfactory to the said party of the second part or his agent, and said party of the second part or his agent may at his option designate the company or companies in which such insurance shall be written, and for such purpose the party of the second part is hereby appointed and constituted the agent of the part _____ of the first part; and in event of injury or destruction of said buildings by fire, the said party of the second part is hereby expressly authorized to make settlement with the insurance companies for the amount of insurance that may be paid thereon and to receive money due upon such insurance, and for the purpose of making such receipt and settlement the said party of the second part is constituted the attorney in fact of the part _____ of the first part with full power to do all and everything proper and necessary to be done in and about such settlement and receipt of insurance money as fully to all intents and purposes as the part _____ of the first part might or could do if personally present; and on default the party of the second part may pay such incumbrance, taxes and assessments, or effect such insurance and collect the amount thereof with _____ per cent. interest, and in the event of any of the taxes or assessments on said premises or the interest of the party of the second part or his assigns therein by virtue of these presents becoming delinquent and the said party of the second part purchasing said property at public sale, it is hereby agreed as a part of this indenture that said party of the second part shall be entitled to the full penalty authorized by law to be added to the amount of said taxes or assessments so paid, which entire sum shall then become a part of the debt hereby secured and bear interest at the rate of _____ per cent. per annum from date of purchase, and said party of the second part may without delay at his option enter upon and take possession of said described property, and said

party of the second part is not required to give notice as to the exercise of such option.

It is further agreed that the said part of the first part shall keep all buildings, fences or other improvements on said premises in as good repair and condition as the same are at this date.

It is further agreed that in the event of the commencement of an action for the foreclosure of this mortgage the attorney's fee herein provided for shall become due, and should said party of the second part, his heirs or assigns become involved in litigation by reason hereof or should the title of the part of the first part be called in question in any action or proceeding in any court or before the land department of the United States and the party of the second part shall make expense thereto or incur expense in defending for the part of the first part, all the costs and expenses incurred therein shall be paid by the part of the first part, and the same be recovered as a part of the money hereby secured.

It is further agreed that if on the sale of the mortgaged property it fails to bring sufficient to pay the entire debt hereby secured, with interest, costs, attorney's fees and disbursements, the part of the first part shall pay the deficiency.

And it is expressly understood that the terms, conditions and provisions hereof, whether so expressed in each case or not, shall apply to and bind the respective parties, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year herein first above written.

[Signatures and seals.]

Signed and sealed in presence of

[Signatures.]

NEBRASKA.

1384. Mortgage to Secure Promissory Note.

KNOW ALL MEN BY THESE PRESENTS, that , of county, state of , in consideration of the sum of dollars, in hand paid, do hereby sell and convey unto , of county, and state of , the following described premises, situated in county, and state of , to wit: [description] The intention being to convey hereby an absolute title in fee simple, including all the rights of homestead. TO HAVE AND TO HOLD the premises above described, with all the appurtenances thereunto belonging, unto the said , and to heirs and assigns forever; PROVIDED, ALWAYS, and these presents are upon the express condition that if the said , heirs, executors, or administrators, shall pay or cause to be paid to the said , heirs, executors, administrators, or assigns, the sum of dollars, on the day of , 19 ; dollars, on the day of , 19 ; dollars, on the day of , 19 ; dollars, on the day of , 19 , with the interest thereon and according to the tenor and effect of the promissory note of said , bearing even date with these presents, then these presents to be void, otherwise to be and remain in full force.

Signed the day of , A. D. 19 .

In presence of

NEVADA.

A mortgage of real property shall not be deemed a conveyance, whatever its form, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. Compiled Laws of 1900, § 3357.

NEW HAMPSHIRE.**1385. Mortgage Deed.**

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of to in hand before the delivery hereof well and truly paid by , the receipt whereof do hereby acknowledge, have granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey, and confirm unto the said , heirs and assigns forever, [*here insert description*].

To HAVE AND TO HOLD the said granted premises, with all the privileges and appurtenances to the same belonging to , the said , and heirs and assigns, to and their only proper use and benefit forever. And the said and heirs, executors, and administrators, do hereby covenant, grant, and agree, to and with the said and heirs and assigns, that until the delivery hereof the lawful owner of the said premises, and seized and possessed thereof in own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the premises are free and clear from all and every incumbrance whatsoever; and that and heirs, executors, and administrators, shall and will warrant and defend the same to the said and heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, , wife of the said , in consideration aforesaid, do hereby relinquish my right of dower in the before mentioned premises.

NEVERTHELESS, it is to be considered, and the condition of the foregoing deed is such, that if the said , heirs, executors, and administrators, shall well and truly pay unto the said , heirs and assigns, , then the foregoing deed is to be void, and of no effect; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , in the year of our Lord, 19 .

Signed, sealed, and delivered in the presence of

[*Signatures and seals.*]

NEW JERSEY.**1386. Mortgage with Tax and Insurance Clauses.**

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between of the of in the county of , and state of , of the first part; and of the of in the county of and state of , of the second part, WITNESSETH: That the said part of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to in hand well and truly paid by the said part of the second part, at or

before the sealing and delivery of these presents: the receipt whereof is hereby acknowledged, and the said part of the first part, therewith fully satisfied, contented, and paid: ha given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey, and confirm to the said part of the second part, and to heirs and assigns forever, all tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the of in the county of and state of [*here insert description*].

TOGETHER with all and singular, the profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining; and also, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said part of the first part, of, in, and to the same, and of, in, and to every part or parcel thereof: TO HAVE AND TO HOLD, all and singular the above described tract or parcel of land and premises, with the appurtenances unto the said part of the second part, heirs and assigns, to the only proper use, benefit, and behoof of the said part of the second part, heirs and assigns forever: PROVIDED ALWAYS, and it is agreed by and between the parties to these presents, that if the said , heirs, executors, or administrators do and shall well and truly pay, or cause to be paid, to the said , party of the second part, or to certain attorney or attorneys, heirs, executors, administrators, or assigns, the sum of in year from the date hereof, with lawful interest for the same at the rate of per centum per annum, payable semi-annually, according to the condition of a certain bond bearing even date herewith, without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever; then, and from thenceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding; and the said , heirs, executors, and administrators, do covenant and grant to and with the said party of the second part, heirs and assigns, that the said party of the first part, heirs and assigns, shall not, nor will apply for, or claim any deduction by reason of this mortgage from the taxable value of the said lands and premises; and that the said part of the second part, heirs and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance, or denial of the said , heirs or assigns, or any other person or persons whatsoever. And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible insurance company or companies, to an amount not less than dollars, and assign the policy and certificate thereof to the said party of the second part, as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and

the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

Signed, sealed, and delivered in the presence of

[Signatures and seals.]

[Signatures.]

NEW MEXICO.

No real property shall be sold upon foreclosure of any mortgage, mortgage deed, trust deed, or any other written instrument which may operate as a mortgage, under or by any order, judgment or decree of any court in this territory, until ninety days after the date of the order, judgment or decree, within which time the mortgagor, or anyone for him, may pay off the decree and discharge the mortgage and avoid the sale. And all real property which may be hereafter sold under any mortgage, mortgage deed, trust deed, or any other written instrument which may operate as a mortgage, by virtue of a power of sale contained in the said mortgage, mortgage deed, trust deed or other written instruments, or annexed to, or accompanying the same and which may not be sold under any order, judgment or decree of any court, may be redeemed by the mortgagor, or his assignee or any other parties interested in the said real estate, by paying the purchaser, at such rate, or his assignee, the amount paid with interest at the rate of twelve per centum per annum, at any time within one year after the date of such sale. Compiled Laws of 1897, § 3938.

NEW YORK.

Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the mortgage out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid. Real Property Law, § 250, Birdseye, C. & G. Cons. Laws, p. 5060.

In mortgages of real property, and in bonds secured thereby, the following or similar covenants must be construed as follows:

1. *Agreement that whole sum shall become due.*—The words “and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any installment of principal or of interest for days, or after default in the payment of any tax or assessment for days after notice and demand,” must be construed as meaning that should any default be made in the payment of any installment of principal or any part thereof, or in the payment of said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of days, or such tax or assessment remain unpaid and in arrear for days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable imme-

diately thereafter, although the period above limited for the payment thereof may not then have expired; anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

2. *In default of payment, mortgagee to have power to sell.*—A covenant that the mortgagor “will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law,” must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise, as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

3. *Mortgagor to keep buildings insured.*—A covenant “that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee,” must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be *collectable thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable.

4. *Mortgagor to give further assurance of title.*—A covenant that the mortgagor “will execute any further necessary assurance of the title to said premises, and will forever warrant said title,” must be construed as meaning

* So in original.

that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend. *Ibid.*, § 254, p. 5065.

A grant of real property is absolutely void, unless the same shall be made to the people of the state of New York, if at the time of the delivery thereof, such property is in actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively. *Ibid.*, § 260, p. 5074.

In mortgages on leases of real property and in bonds secured thereby, the following or similar covenants or agreements must be construed as follows:

1. *In default of payment, mortgagee to have power to sell.*—A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee or obligee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor or obligor shall well and truly pay unto the mortgagee or obligee the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall be made in the payment of the said sum of money mentioned therein, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said mortgagor or obligee, his legal representative or assigns, to sell, transfer and set over, all the rest, residue and remainder of the said term of years then yet to come, and all other, the right, title and interest of the said mortgagor or obligor of, in and to the same, at public auction, according to the act in such case made and provided. And as the attorney of the said mortgagor or obligor for that purpose by these presents duly authorized, constituted and appointed, to make, seal, execute and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer or other conveyance in the law, for the said premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said mortgagor or obligor, his legal representatives or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said mortgagor or obligor, and against all persons claiming or to claim the premises or any part thereof, by, from or under him or them, or any of them.

2. *Mortgagor to keep buildings insured.*—A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the said mortgagor or obligor shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurance, and in an amount approved by the said mortgagee or obligee and his assigns, and either assign the policy and certificates thereof or have such insurance made payable to the said mortgagee or obligee or his assigns, and in default thereof it shall be lawful for the said mortgagee

or obligee and his assigns to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with legal interest.

3. *Mortgagor to pay rent and charges on premises.*—A covenant that the mortgagor “will pay the rent and other charges mentioned in and made payable by said indenture of lease within days after said rent or charges are payable,” must be construed as meaning that the said mortgagor or obligor and his legal representatives and assigns, will pay or cause to be paid, and discharge all rent and rents mentioned in and made payable by the indenture of lease aforesaid, and also all taxes, assessments or other charges that now are a lien, or hereafter shall or may be levied, assessed or imposed and become a lien upon the premises above described or any part thereof; and in default thereof, for the space of after such taxes or assessments or after the said rent or rents, or any of them shall have become due and payable by the terms of said lease or by law, then and in each and every such case the said mortgagee or obligee, his legal representatives or assigns may, at option, and without notice, pay such rent or rents, taxes, assessments or other charges and expenses, and the amount so paid, and interest thereon, from the time of such payment, shall forthwith be due and payable from the said mortgagor or obligor, his legal representatives or assigns, to the said mortgagee or obligee, his legal representatives or assigns, and shall be deemed to be secured by these presents, and shall be *collectable in the same manner, and at the same time, and upon the same conditions as the interest then next maturing upon the principal sum hereinbefore mentioned.

4. *Agreement that whole sum shall become due.*—The words “And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any installment of principal or after default in the payment of interest for days, or after default in the payment of any rent or other charge made payable by said indenture of lease for days, or after default in the payment of any tax or assessment for days after notice and demand,” must be construed as meaning that should any default be made in the payment of any installment of principal or any part thereof, or of said interest or any part thereof, or of any rent or other charge made payable by said indenture or lease, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due and payable, and should the said interest, rent or other charge aforesaid, remain unpaid and in arrear for the space of days, or such tax or assessment remain unpaid and in arrear for days after written notice by the mortgagee or obligee, his executors, administrators or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, rent and other charges paid by the mortgagee or obligee, shall, at the option of the said mortgagee or obligee, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding. *Ibid.*, 271, p. 5082.

In any mortgage on a lease of real property the words “together with the appurtenances and all the estate and rights of the part. . . of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease,” must be construed as meaning, together with all and singular the edifices, buildings, rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property,

* So in original.

possession, claim and demand whatsoever, as well in law as in equity, of the said mortgagor or obligor, of, in and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and the renewal therein provided for, and every clause, articles and condition therein expressed and contained. *Ibid.*, § 272, p. 5084.

Every conveyance, assignment, or other transfer of, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as hereinafter provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded. If such interest is entirely in the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the clerk of the county where such real property is situated. If such interest is in both the personal and the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of administration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same, and also in the office of the said county clerk. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent, in a book to be kept for that purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio. *Ibid.*, § 274, p. 5087.

The forms in general use in New York state are given as forms Nos.

The following forms are stated by statute to be lawful, but the use of other forms is thereby prevented or invalidated.

1387. Mortgage on Real Property.

(Real Property Law, § 258, Birdseye, C. & G. Cons. Laws, pp. 5070, 5071.)

THIS INDENTURE, made the day of , in the year nineteen hundred and , between , of , party of the first part, and , of , party of the second part.

WHEREAS, the said is justly indebted to the said party of the second part in the sum of dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of dollars, on the day of , nineteen hundred and , and the interest thereon, to be computed from , at the rate of per centum per annum, and to be paid .

It being thereby expressly agreed that the whole of the said principal sum shall become due after default of the payment of any installment of principal, interest, taxes or assessments, as hereinafter provided.

Now, THIS INDENTURE WITNESSETH, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (*or*, successors) and assigns forever (*description*), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises. To

HAVE AND HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever. PROVIDED, ALWAYS, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part covenants with the party of the second part as follows:

1. That the said party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the said party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of any installment of principal or of interest for days, or after default in the payment of any tax or assessment for days after notice and demand.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In presence of

As to the construction of the various covenants, see Real Property Law, §§ 254, 255; Birdseye, C. & G. Cons. Laws, pp. 5065-5068.

The construction of the covenants in a mortgage has been further amended by Real Property Law, §§ 271, 272; Birdseye, C. & G. Cons. Laws, pp. 5082-5085, and a statutory form of a mortgage on a lease of real property has been prescribed by Real Property Law, § 273; Birdseye, C. & G. Cons. Laws, pp. 5085-5087.

1388. Mortgage on Lease of Real Property.

(Real Property Law, § 273, Birdseye, C. & G. Cons. Laws, pp. 5085-5087.)

THIS INDENTURE, made the day of , in the year one thousand hundred and , between (insert residence), of the first part, and of (insert residence), of the second part; WHEREAS did, by a certain indenture of lease, bearing date the day of , in the year one thousand nine hundred and , demise, lease and to farm let unto and to executors, administrators and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances; TO HAVE AND TO HOLD THE the same unto the said and to executors, administrators and assigns, for and during and until the full end and term of years, from the day of , one thousand nine hundred and , fully to be complete and ended, yielding and paying therefor unto the said , and to , or assigns, the yearly rent or sum of .

AND WHEREAS, the said part of the first part justly indebted to the said part of the second part, in the sum of lawful money of the United States of America, secured to be paid by certain bond or obligation, bear-

ing even date herewith, conditioned for the payment of the said sum of _____ on the _____ day of _____, nineteen hundred and _____, and the interest thereon to be computed from _____ at the rate of _____ per centum per annum and to be paid _____.

It being thereby expressly agreed that the whole of the said principal sum shall become due at the option of the mortgagee or obligee after default in the payment of interest, taxes or assessments or rents, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH that the said part _____ of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of the sum of one dollar, paid by the said part _____ of the second part, the receipt whereof is hereby acknowledged, doth grant and release, assign, transfer and set over unto the said part _____ of the second part and to his heirs (*or. successors*), and assigns forever (*description*).

TOGETHER with the appurtenances and all the estate and rights of the part _____ of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease.

TO HAVE AND HOLD the said indenture of lease and renewal, and the above-granted premises unto the said part _____ of the second part, his heirs and assigns, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, in said indenture of lease and in the renewals therein provided for; subject, nevertheless, to the rents, covenants, conditions, therein provisions in the same indenture of lease mentioned.

PROVIDED ALWAYS that if the said part _____ of the first part shall pay unto the said part _____ of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted, shall cease, determine and be void.

AND the said part _____ of the first part covenant with the said part _____ of the second part as follows:

FIRST. That the part _____ of the first part will pay the indebtedness, as hereinbefore provided.

AND if default shall be made in the payment of any part thereof the said part _____ of the second part shall have power to sell the premises therein described according to law.

SECOND. That the said premises now are free and clear of all incumbrances whatsoever, and that _____ ha good right and lawful authority to convey the same in manner and form hereby conveyed.

THIRD. That the part _____ of the first part will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee.

FOURTH. That the part _____ of the first part will pay the rents and other charges mentioned in and made payable by said indenture of lease within _____ days after said rents or charges are payable.

FIFTH. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said mortgagee or obligee, after default in the payment of any installment of principal, or after default in the payment of interest for _____ days, or after default in the payment of any

rent or other charge made payable by said indenture of lease for days, or after default in the payment of any tax or assessment for days after notice and demand.

IN WITNESS WHEREOF, the said part of the first part to these presents ha hereunto set hand and seal the day and year first above written.

SEALED and delivered in the presence of

NORTH CAROLINA.

In all mortgages and deeds of trust wherein two or more persons, as trustees or otherwise, are given power to sell the property therein conveyed or embraced, and one or more of such persons shall be dead, anyone of the persons surviving having such power may make sale of such property in the manner directed in such deed, and execute such assurances of title as are proper and lawful under the power so given; and the act of such person, in pursuance of said power shall be as valid and binding as if the same had been done by all the persons on whom the power was conferred. Revisal of 1908, § 1033.

1389. Mortgage Deed.

NORTH CAROLINA, }
County. }

THIS INDENTURE, made this day of , A. D. 19 , by and between and , his wife, of county, and state of , parties of the first part, and of county, and state of , part of the second part, WITNESSETH:

THAT WHEREAS, said part of the first part are justly indebted to said part of the second part in the sum of dollars, as evidenced by bond of even date herewith, bearing interest from date at per cent. per annum, and due and payable on the . And whereas, said part of the first part are anxious to secure the payment of said bond at maturity: NOW, THEREFORE, in consideration of the premises, and for the purposes aforesaid, and for the sum of ten dollars to the part of the first part paid by the part of the second part, the receipt of which is hereby acknowledged, said part of the first part have given, granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do hereby give, grant, bargain, sell, alien, convey and confirm unto said part of the second part, heirs and assigns forever, a certain piece or tract of land lying and being in county, state aforesaid, in township, and described and defined as follows, to wit: [description]

TO HAVE AND TO HOLD said land and premises to said part of the second part, h heirs and assigns forever. And said part of the first part do covenant to and with said part of the second part, h heirs and assigns: That h are the owners and seized of said premises in fee simple; that h have the right to convey the same; that the same are free from any incumbrance whatsoever, and that h will forever warrant and defend the title to the same from the lawful claims of all persons whomsoever.

IT IS UNDERSTOOD AND AGREED between the parties of this deed that the part of the first part shall keep the buildings on said premises insured in some reliable insurance company having an agency in the said county of in the sum of dollars, and if any loss should occur the same shall

be payable to the part of the second part, to be applied, as far as may extend, to the satisfaction of this mortgage. And if the part of the first part shall fail to insure said buildings for ten hours, the part of the second part shall be at liberty to effect such insurance, and the amount expended for insurance shall be deemed principal money, bearing per cent. interest per annum, and be payable when the next installment of interest becomes due.

But this deed is made on this special trust: That if said part of the first part shall well and truly pay to said part of the second part or legal representatives, the bond hereinbefore described, at maturity, then this deed to be null and void.

But if default shall be made in the payment of said bond or the interest on the same, or any part of either at maturity, then and in that event it shall be lawful for and the duty of said part of the second part to sell said land hereinbefore described, to the highest bidder, for cash, at the court-house door in county, first advertising the same for thirty days in some newspaper published in county, and convey the same to the purchaser in fee simple; and out of the moneys arising from said sale to pay said bond and interest on same, together with costs of sale, and pay surplus (if any) to said part of the first part, or h legal representatives.

IN TESTIMONY WHEREOF, said part of the first part hereto subscribe their names and affix their several seals.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signatures.]

1390. Deed of Trust, with Insurance Clause.

NORTH CAROLINA, }
County. }

THIS INDENTURE, made and executed this the day of , in the year of our Lord one thousand nine hundred and , by and between , of county, state of , part of the first part, trustee, of county, state of , party of the second part, and , of county, state of , part of the third part,

WITNESSETH, that whereas, the said , part of the first part, justly indebted to , the said part of the third part, in the sum of dollars (\$), as evidenced by . due and payable , and bearing interest from at the rate of per centum per annum, payable ; and whereas, said part of the first part desire to secure the payment of said bond at maturity, according to tenor, with all interest due thereon.

Now, THEREFORE, for and in consideration of the premises and for the purposes aforesaid, and for the further consideration of dollars to said part of the first part paid by said trustee, the receipt whereof is hereby expressly acknowledged, the said , part of the first part, ha granted, bargained, sold, released and conveyed, and by these presents do grant, bargain, sell, release and convey unto the said , trustee, party of the second part, his heirs, successors and assigns, tract or parcel of land, situate in township, county, state of North Carolina, and described as follows: [description]

TO HAVE AND TO HOLD the said land and property to the said _____, trustee, party of the second part, his heirs, successors and assigns, forever in fee. And said _____, part of the first part, for _____ sel _____ and _____ heirs, executors and administrators, do hereby covenant to and with the said _____, trustee, party of the second part, and his heirs, successors and assigns, that the said part _____ of the first part _____ seized in fee simple of said premises and ha _____ right to convey the same, and that the same are free from incumbrance _____ and that _____ will forever warrant and defend the title to the same against the lawful claims and demands of all persons whomsoever.

And the said part _____ of the first part further covenant and agree to and with said parties of the second and third parts, that _____ will keep the premises above conveyed, insured in some responsible insurance company, acceptable to said trustee, in the sum of _____ dollars, and that _____ will keep all taxes paid upon said property; and if said part _____ of the first part shall fail to do this, said part _____ of the second part or said part _____ of the third part may effect such insurance and pay such taxes, and all premiums so paid for insurance and amounts so expended in payment of taxes by said part _____ of the second or third part, with interest from date of payment at _____ per cent., shall be secured under this conveyance and due and payable at the time of the next installment of interest thereafter. And said parties of the first and second parts do hereby covenant and agree to and with said part _____ of the third part, that in case the said trustee shall die, become incapable of acting, renounce his trust, or for other reason become unacceptable to said part _____ of the third part, then upon notice to the parties of the first and second parts, if living, the part _____ of the third part may appoint, in writing, a trustee to take the place of the party of the second part, and upon the probate and registration of the same the trustee thus appointed shall succeed to all the rights and powers of the party of the second part.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the said part _____ of the first part shall well and truly pay off and discharge the bond above mentioned at maturity, with interest due thereon, then this conveyance shall become null and void, and may be canceled upon the registration book according to law, or the title thereto reinvested in him according to law.

But if default shall be made in the payment of said bond _____ or the interest upon the same, or any part of either, or of any taxes or insurance premium paid as above provided, then in that event all of said bond _____ shall at once become due and payable, whatever may be the date of maturity expressed therein; and it shall then become lawful for and the duty of said party of the second part, if requested by said part _____ of the third part, to advertise the land and property above described in some newspaper published in said county (or if there be none, then in some newspaper published in an adjoining county), at least once a week for four weeks, and by notice posted at the court-house door and three other public places in the county for thirty days immediately preceding such sale, and sell the same for cash (or upon such terms as shall seem proper to said trustee), and to make a good and sufficient conveyance to the purchaser by deed in fee simple. The money arising from such sale shall be applied, first, to the expenses of sale, including a commission to the trustee of _____ per cent.; secondly, to the amount due on the

bond above mentioned, principal and interest, up to day of sale; and thirdly, the balance shall be paid to , part of the first part, h executors and administrators.

It is further stipulated and agreed that any statement of facts or recital by said trustee in his deed in relation to the non-payment of the money secured to be paid, the amount due, the advertisement, sale, receipt of the money, and execution of the deed to the purchaser shall be received as prima facie evidence of such fact.

IN TESTIMONY WHEREOF, the said parties of the first and second parts (though the same shall be fully executed if not executed by the party of the second part), have hereunto set their hands and affixed their seals, on the day and year first above written.

[Signatures and seals.]

NORTH DAKOTA.

1391. Mortgage on Real Property, Statutory Form.

(Revised Code of 1905, § 6174.)

THIS MORTGAGE, made the day of , in the year , by A. B., of , mortgagor, to C. D., of , mortgagee, WITNESSETH: That the mortgagor mortgages to the mortgagee [*here describe the property*], as security for the payment to him of dollars on or before the day of , in the year , with interest thereon [*or, as security for the payment of an obligation, describing it, etc.*].

A. B.

1392. Mortgage Deed.

THIS INDENTURE, made this day of in the year of our Lord one thousand nine hundred and , between of the county of and state of , part of the first part, and of the county of and state of , part of the second part,

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to the said part of the second part, heirs and assigns, forever, all tract or parcel of land lying and being in the county of and state of North Dakota, described as follows, to wit: [*description*]

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said part of the second part, heirs and assigns, forever. And the said , part of the first part, do covenant with the said part of the second part, heirs and assigns, as follows: First, that he lawfully seized of said premises; second, that he ha good right to convey the same; third, that the same are free from all encumbrances ; fourth, that the said part of the second part, heirs and assigns, shall quietly enjoy and possess the same; and that the said part of the first part will warrant and defend the title to the same against all lawful claims.

PROVIDED, NEVERTHELESS, that if the said , part of the first part, heirs, executors or administrators, shall well and truly pay, or cause

to be paid, to the said part of the second part, heirs, executors, administrators or assigns, the sum of dollars, and interest, according to the conditions of , bearing even date herewith, and also to pay all taxes which now are, or may be hereafter assessed on said premises as they shall become due, then this deed to be null and void. But if default shall be made in the payment of said sum of money, or the interest, or the taxes, or any part thereof, at the time and in the manner hereinbefore or hereinafter specified for the payment thereof, the said part of the first part, in such case do hereby authorize and fully empower the said part of the second part, heirs, executors, administrators or assigns, to sell the said hereby granted premises, and convey the same to the purchaser, in fee simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on said note , and all taxes upon said lands, together with all costs and charges, and also statutory attorney's fees, and pay the overplus, if any, to the said part of the first part, heirs, executors, administrators or assigns.

And the said do further covenant and agree to and with the said part of the second part, heirs, executors, administrators and assigns, to pay said sum of money above specified at the time and in the manner above mentioned, together with all the costs and expenses, if any there shall be; and, also, in case of the foreclosure of this mortgage, said statutory attorney's fees in addition to all sums and costs allowed in that behalf by law, which said sum is hereby acknowledged and declared to be a part of the debt hereby secured, and which shall be assessed and payable as part of said debt, and that he will pay all taxes and assessments of every nature that may be assessed on said premises, or any part thereof, previous to the day appointed by law for the sale of lands for town, city, county or state taxes. And if default be made by the said part of the first part, in any of the foregoing provisions, it shall be lawful for the said part of the second part, heirs, executors, administrators or assigns, or attorney , to declare the whole sum above specified to be due and payable.

IN TESTIMONY WHEREOF, the said part of the first part ha hereunto set hand and affixed seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

1393. Mortgage Deed — Insurance Clause.

THIS MORTGAGE, made this day of , in the year of our Lord one thousand , between , of , county of , and , of , part of the first part, and , of , county of , and of , part of the second part:

WITNESSETH, that the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by said part of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey, unto the said part of the second part,

heirs and assigns, forever, all tract or parcel of land lying and being in the county of _____, and state of North Dakota, and described as follows, to wit: [*description*]

To HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said part of the second part, heirs and assigns, forever. And the said part of the first part, for heirs, executors and administrators, hereby covenant with the said part of the second part, heirs and assigns, that lawfully seized in fee of the aforesaid premises, and ha good right and lawful authority to sell and convey the same; that they are free from all encumbrances, _____, and that the said part of the second part, heirs and assigns shall quietly enjoy and possess the same; and that _____, heirs and assigns, will forever warrant and defend the title to the same unto the part of the second part, heirs and assigns, against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if the said part of the first part, heirs, executors, or administrators, shall pay or cause to be paid to the said part of the second part, heirs, executors, administrators or assigns, the sum of _____ dollars, and interest according to the condition of _____, bearing even date herewith, then this mortgage shall be void.

IT IS FURTHER AGREED, that the part of the first part also agree to pay all taxes which are or may hereafter be assessed against said premises as they shall become due, and should the part of the first part fail to pay the taxes aforesaid when due, the part of the second part, if _____ so elect, may pay the same, and the amount so paid shall draw interest at the rate _____ per cent. per annum, and this mortgage shall stand as security therefor.

And the part of the first part further covenants and agrees that at all times during the continuance of this mortgage, and until the same shall be fully paid or released _____ will keep the buildings on said premises continually insured in some responsible insurance company, satisfactory to the mortgagee _____, against loss by fire, and also against loss or damage by tornado or cyclone, in such sum as shall be approved by the mortgagee _____, said insurance to be payable, in case of loss, to the said part of the second part, as interest may appear.

If default be made in the payment of said sum of money, principal or interest, or taxes, or insurance aforesaid, then and in that case the said part of the second part, heirs, executors, administrators or assigns, may at _____ election, declare the whole amount due and payable, and may proceed to collect the same with all accrued interest and taxes due up to the time of payment. And the said part of the first part further agree that if said sum of money, principal or interest, or either of them, be not paid when due, whether on the full maturity thereof, or upon being declared due on account of default made as aforesaid, then and in that event the said part of the second part, heirs, executors, administrators and assigns, hereby authorized and empowered to sell the hereby granted premises, and convey the same to the purchaser, agreeably to the statute in such case made

and provided, and out of the moneys arising from such sale to retain the principal and interest which shall be then due, and all taxes upon said lands, together with all charges and disbursements, paying the surplus, if any, to the said part of the first part, heirs, executors, administrators or assigns.

IN WITNESS WHEREOF, the said part of the first part ha set hand the day and year first above written.

[Signatures and seals.]

Signed and delivered in the presence of

[Signatures.]

OHIO.

1394. Mortgage with Release of Dower.

KNOW ALL MEN BY THESE PRESENTS, that , in consideration of , paid by , the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said , his heirs and assigns forever, all that, etc. [*here describe premises*], and all the estate, title, and interest of the said grantor, either in law or in equity, of, in and to said premises, together with all the privileges and appurtenances to the same belonging, and all rents, issues, and profits thereof:

TO HAVE AND TO HOLD the same to the only proper use of the said grantee, his heirs and assigns forever. And the said , for sel , heirs, executors, and administrators, do hereby covenant with the said grantee, heirs and assigns, that is the true and lawful owner of the said premises, and has full power to convey the same, that the title so conveyed is clear, free, and unincumbered, and further that do warrant and defend the same against all claim or claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if , then these presents shall be void.

IN WITNESS WHEREOF, the said and , his wife, who hereby releases her right and expectancy of dower in said premises, have hereunto set their hands and seals this day of , 19 .

[Signatures and seals.]

Signed and sealed in the presence of

[Signatures.]

OKLAHOMA.

A mortgage upon real estate may be substantially in the following form, to wit:

1395. Mortgage, Statutory Form.

KNOW ALL MEN BY THESE PRESENTS: that and of county in the of part of the first part, have mortgaged and hereby mortgage to of county of part the second part, the following described real estate and premises, situated in county, state of Oklahoma, to wit: with all the improvements thereon and appurtenances thereunto belonging, and warrant the title to the same; this

mortgage is given to secure the principal sum of dollars, with interest at the rate of per centum per annum, payable annually from according to the terms of certain promissory note described as follows, to wit:

Dated this day of , 189 .

Compiled Laws of 1909, § 1224.

Every instrument substantially the same as the above shall be deemed a good and valid mortgage, with all contracts and covenants essential to protect the rights of the holder thereof; but any further lawful contract embodied therein shall be binding upon the parties thereto; and when the words "and waive the appraisalment" are written or printed therein, the premises mortgaged must be sold without appraisalment, in case of foreclosure and sale thereunder, and in such case no order for such sale shall issue for six months after the date of judgment. *Ibid.*, § 1225.

A mortgage of real property may be made in substantially the following form:

1396. Mortgage, Statutory Form.

This mortgage, made day of , in the year by A. B., , mortgagor, to C. D., of mortgagor, WITNESSETH.

That the mortgagor mortgages to the mortgagee [*here describe the property*] as security for the payment to him of dollars, on or before the day of , in the year , with interest thereon (*or, as security for the payment of an obligation, describing it, etc.*).

A. B.

Ibid., § 4409.

Every grant of real property, or of any estate therein, which appears by any other writing, to be intended as a mortgage within the meaning of this chapter (§§ 4405-4434), must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded at the same time and place, the grantee can derive no benefit from such record. *Ibid.*, § 4413.

OREGON.

1397. Mortgage.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , between , of the first part, and , of the second part, WITNESSETH: That the said part of the first part, for and in consideration of the sum of dollars, to in hand paid, the receipt whereof is hereby acknowledged, ha bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does bargain, sell, alien, release, convey, and confirm, unto the said part of the second part,

 heirs and assigns forever, all [*here insert description*]. Together with the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and also, all the estate, right, title, and interest of the said part of the first part, of, in, and to the same. TO HAVE AND TO HOLD the hereinbefore granted, bargained, and described premises, with the appurtenances, unto the said part of the second part, heirs and assigns, to

and their own use, benefit, and behoof forever. This conveyance is intended as a mortgage to secure the payment of the sum of dollars, in accordance with the tenor of certain promissory note , of which the following substantially cop , to wit: [*here insert copy*].

Now, THEREFORE, if the said promissory note, principal and interest, and attorney's fees , shall be paid when the same shall become due, according to the terms and conditions of said promissory note, and of this indenture, then this indenture shall be void, but in case default shall be made in the payment of the principal or interest, or attorney's fees, mentioned in said promissory note or any part thereof, or in case default shall be made in the payment of any sum that may become due and payable, as is hereinafter provided, then the part of the second part, executors, administrators and assigns, are hereby empowered to sell the premises above described with all and every of the appurtenances or any part thereof, in the manner prescribed by law, and out of the money arising from said sale to retain the said principal and attorney's fees and such other sum or sums as may be due hereunder, together with the costs and charges of making such sale; and the overplus, if any, pay on demand to the part of the first part, heirs or assigns.

It is expressly understood and agreed, that such premises are and shall be kept until this mortgage is fully paid and satisfied, free from all liens or incumbrances whatsoever that shall or may have precedence of this mortgage, that all buildings and tenements that are now upon, or that may hereafter be erected upon said premises, shall be kept insured for an amount not less than

during all the time that this mortgage shall remain unpaid or unsatisfied, in one or more good and responsible fire insurance companies, against all loss or damage by fire; the loss or damage, if any, to be made payable to the said part of the second part, executors, administrators and assigns, and in case the said part of the first part, heirs or assigns, shall fail, neglect or refuse to obtain said insurance, or to pay all taxes, street assessments, mechanics' liens, or claims of every name and nature, that are or may become a lien or liens upon said premises, having precedence of the lien of this mortgage before the same shall become delinquent, then the said part of the second part, executors, administrators and assigns, may, at their option, obtain said insurance and pay the premiums therefor, and may pay, discharge and satisfy any and all such taxes, street assessments or liens, at maturity, and all sums of money thus expended shall at once become due and payable on demand from said part of the first part, heirs and assigns, to the said part of the second part, executors, administrators and assigns, and that such payment, as well as the attorney's fees mentioned in said note , be and they are hereby secured by the lien of this mortgage.

It is also expressly understood, that if any sum made payable by the terms of said promissory note , or becoming due hereunder, shall remain unpaid for a period of after the same shall have become due and payable, then the part of the second part, executors, administrators and assigns, may foreclose this mortgage at any time thereafter.

And the said , heirs, executors and administrators do covenant and agree to pay unto the said part of the second part, executors, administrators or assigns, the said sum of money as above mentioned.

IN WITNESS WHEREOF, have hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed and delivered in the presence of us as witnesses.

[Signatures.]

PENNSYLVANIA.

All mortgages, or defeasible deeds in the nature of mortgages, for any lands, tenements or hereditaments within this commonwealth, shall have priority according to the date of recording the same, without regard to the time of making or executing such deeds. If two or more are left upon the same day, they shall have priority according to the time they are left at the office for record. No mortgage given for the purchase-money of land so mortgaged shall be affected by this act, if the same be recorded within sixty days from the execution thereof. Stewart's Purdon's Digest (13th ed.), pp. 1181, 1182, § 158.

1398. Mortgage.

THIS INDENTURE, made the day of , in the year of our Lord one thousand nine hundred and , between of the one part, and , of the other part:

WHEREAS, the said in and by obligation or writing obligatory under hand and seal duly executed, bearing even date herewith, stand bound unto the said in the sum of lawful money of the United States of America, conditioned for the payment of the just sum of , lawful money as aforesaid, , together with interest thereon, payable at the rate of per cent. per annum; and also all premiums paid by the said , executors, administrators, or assigns, for maintaining an insurance against loss or damage by fire, to an amount not exceeding dollars, upon the premises hereinafter described, without any fraud or further delay. PROVIDED, HOWEVER, and it is thereby expressly agreed, that if at any time default shall be made in the payment of interest for the space of after shall fall due, or in the payment of any premium of insurance as aforesaid, then and in such case the whole principal debt aforesaid shall, at the option of the said , executors, administrators, or assigns, become due and payable immediately; and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding: AND PROVIDED FURTHER, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in payment, either of said principal sum at maturity, or of said interest, or of premiums of insurance, within the time specified, a writ of *feri facias* is properly issued upon the judgment obtained upon said obligation, or by virtue of said warrant of attorney, or a writ of *scire facias* is properly issued upon this indenture of mortgage, an attorney's commission for collection, viz.: per cent. shall be payable, and shall be recovered in addition to all principal, interest, and premiums of insurance then due, besides costs of suit, as in and by the said recited obli-

gation and the condition thereof, relation being thereunto had, may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH: That the said _____ as well for and in consideration of the aforesaid debt or _____ sum of _____, and for the better securing the payment of the same, with interest, unto the said _____, executors, administrators, and assigns, in discharge of the said _____ recited obligation as, for, and in consideration of the further sum of one dollar unto _____ in hand well and truly paid by the said _____ at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, _____ granted, bargain, sold, aliened, enfeoffed, released, and confirmed, and by these presents _____ grant, bargain, sell, alien, enfeoff, release, and confirm unto the said _____, _____ heirs and assigns,

TOGETHER with all and singular the ways, waters, water-courses, rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof,

TO HAVE AND TO HOLD the said the hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said _____, _____ heirs and assigns, to and for the only proper use and behoof of the said _____, _____ heirs and assigns forever.

PROVIDED ALWAYS, nevertheless, that if the said _____, _____ heirs, executors, administrators, or assigns, do and shall well and truly pay, or cause to be paid, unto the said _____, _____ executors, administrators, or assigns, the aforesaid debt or _____ sum of _____ on the _____ day and time hereinbefore mentioned and appointed for payment of the same, together with interest and premiums of insurance, as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything, for or in respect of any taxes, charges, or assessments whatsoever, that then, and from thenceforth, as well this present indenture, and the estate hereby granted, as the said _____ recited obligation shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. PROVIDED FURTHER, in case of default in the payment of _____, as aforesaid, or in the payment of any premium of insurance, as aforesaid, _____, that thereupon it shall be lawful for the said _____, _____ executors, administrators, or assigns, to sue out forthwith a writ of *scire facias* upon this present indenture of mortgage, and to proceed at once thereon to recover the principal moneys hereby secured, _____, and all interest or premiums of insurance due thereon, together with an attorney's commission for collection, viz.: _____ per cent., besides costs of suit, without further stay, any law or usage to the contrary notwithstanding.

IN WITNESS WHEREOF, the said part _____ of the first part to these presents hereunto set _____ hand and seal. Dated the day and year first above written.

Sealed and delivered in the presence of _____ [Signatures and seals.]

1399. **Sci. Fa. Bond and Short Warrant — Com. Ins. and Waiver.**

KNOW ALL MEN BY THESE PRESENTS, that held and firmly bound unto , in the sum of , lawful money of the United States of America, to be paid to the said , certain attorney, executors, administrators or assigns: to which payment well and truly to be made, heirs, executors and administrators, firmly by these presents. Sealed with seals dated the day of , in the year of our Lord one thousand nine hundred and .

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bounded , heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named , certain attorney, executors, administrators or assigns, the just sum of , lawful money as aforesaid , together with interest thereon, payable , at the rate of per cent. per annum; and also all premiums paid by the said , executors, administrators or assigns, for maintaining an insurance against loss or damage by fire, to an amount not exceeding dollars, upon the premises described in the accompanying indenture of mortgage, without any fraud or further delay; then the above obligation to be void, or else to be and remain in full force and virtue: PROVIDED, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of , interest , for the space of , after shall fall due, , or in the payment of any premium of insurance as aforesaid, then and in such case the whole principal debt aforesaid, , shall, at the option of the said , executors, administrators or assigns, become due and payable immediately, and payment of said principal , and all interest thereon, may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding.

AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default in payment, either of said principal sum, , at maturity, or of said interest, or of said premiums of insurance, a writ of *fieri facias* is properly issued upon the judgment obtained upon this obligation, or by virtue of the warrant of attorney hereto attached, or a writ of *scire facias* is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz.: per cent., shall be payable, and shall be recovered in addition to all principal, interest and premium of insurance then due, besides costs of suit.

AND FURTHER, do by these presents empower , or any other attorney of any court of record in the state of , or elsewhere, to appear for therein and confess judgment against for the said penal sum, with costs of suit and release of all errors, and do hereby waive the right of inquisition on real estate, and all laws exempting real or personal property from levy and sale on execution.

[Signatures and seals.]

Sealed and delivered in the presence of us

[Signatures.]

PORTO RICO.

The following property only can be the subject of a mortgage contract:

1. Real property.
2. Property rights in real estate which can be alienated in accordance with law. Civil Code of 1902, § 1775.

It is indispensable, in order that the mortgage may be validly constituted, that the instrument in which it is created be entered in the registry of property. *Ibid.*, § 1776.

The form, extension, and effects of the mortgage, as well as all that relating to its creation, modification, and extinction, and all that which may not have been included in this chapter (§§ 1775-1781), shall be subject to the provisions of the mortgage law, which continues in force. *Ibid.*, § 1781.

RHODE ISLAND.

A mortgage given by a guardian under leave from a probate court may contain such powers of sale, conditions, and covenants as are usual in mortgages taken by savings banks in this state. Notes secured by, and covenants contained in, mortgages given by guardians, so far as such notes and covenants are made by the guardian as such, shall not bind the guardian personally, but only the estate of his ward. General Laws of 1909, p. 1107, § 18.

1400. Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that I, _____, hereinafter called the mortgagor, in consideration of _____ dollars, to _____ paid by _____, hereinafter called the mortgagee, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said mortgagee and heirs and assigns forever [*description*]

TO HAVE AND TO HOLD the aforegranted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said mortgagee, and _____ heirs and assigns forever.

And _____ the said mortgagor do hereby, for _____ and for _____ heirs, executors and administrators, covenant with the said mortgagee and _____ heirs and assigns that _____ lawfully seized in fee simple of the said granted premises; that the same are free from all incumbrances _____, that _____ have good right, full power and lawful authority to sell and convey the same in manner as aforesaid; that the said mortgagee and _____ heirs and assigns shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises, and that _____ the said mortgagor will, and _____ heirs, executors and administrators shall, warrant and defend the same to the said mortgagee and _____ heirs and assigns forever against the lawful claims and demands of all persons.

And for the consideration aforesaid _____ do hereby release all _____ right of dower in and to the said granted premises unto the said mortgagee and _____ heirs and assigns forever.

PROVIDED, NEVERTHELESS, and this conveyance is made upon the express condition, that if the said mortgagor, or _____ heirs, executors, administrator or assigns, shall pay unto the said mortgagee, or _____ executors, administrators or assigns, the sum of _____ dollars, wherefor the said mortgagor made _____ negotiable promissory note for said aggregate sum,

bearing even date with these presents, and made payable to the order of _____ from the date hereof, with interest thereon at the rate of _____ per centum per annum, payable semi-annually, _____ until said principal sum paid, whether at or after maturity, and all installments of interest in arrear, whether before or after maturity, to bear interest at the rate aforesaid until paid, and shall also pay all taxes and assessments of every kind levied or assessed upon or in respect of said premises, then this deed, as also said promissory note, shall become and be absolutely void to all intents and purposes whatsoever.

BUT IF DEFAULT shall be made in the payment of the said _____, or of said interest, at the time or times and in the manner aforesaid, or of the taxes or assessments aforesaid as the same become payable, or of any or either of them, or of any part thereof, or if breach shall be made of the covenant for insurance hereinafter contained, then it shall be lawful for the said mortgagee, _____, executors, administrators or assigns, to sell, together or in parcels, all and singular the premises hereby granted or intended to be granted, or any part or parts thereof, and the benefit and equity of redemption of the said _____, and _____ heirs, executors, administrators and assigns therein, at public auction upon the premises, _____, and to bid for and become the purchaser or purchasers at any such sale (and no other purchaser or purchasers shall be answerable for the application of the purchase money,) first giving notice of the time and place of sale by publishing the same at least once each week for three successive weeks in _____ newspaper published in _____, with power to adjourn such sale from time to time, provided that the publishing of said notice shall be continued, together with a notice of the adjournment or adjournments, at least once each week in the same newspaper; and in _____ or _____ own name or names, or as the attorney or attorneys of the said _____, (for that purpose by these presents duly authorized and appointed with full power of substitution and revocation,) to make, execute and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of said premises in fee simple, and to receive the proceeds of such sale or sales, and from such proceeds to retain all sums hereby secured, whether then due or to fall due thereafter, or the part thereof then remaining unpaid, and also the interest then due on the same, together with all expenses incident to such sale or sales, or for making deeds hereunder, and for fees of counsel and attorneys, and all costs or expenses incurred in the exercise of said powers, and all taxes, assessments and premiums for insurance, if any, either theretofore paid by the said mortgagee, _____, executors, administrators or assigns, or then remaining unpaid, upon said granted premises, rendering and paying the surplus of said proceeds of sale, if any there be, over and above the amounts so to be retained as aforesaid, together with a true and particular account of such sale or sales, expenses and charges, to the said _____, _____ heirs, executors, administrators or assigns, which sale or sales made as aforesaid shall forever be a perpetual bar both in law and equity against the said _____, _____ heirs, executors, administrators and assigns, and all persons claiming said premises, so sold, by, from or under _____ them, or any of them.

And , the said mortgagor , for and for heirs, executors, administrators and assigns, hereby covenant with the said mortgagee , and heirs, executors, administrators and assigns, that and they will upon request execute such deed or deeds confirmatory of said sale or sales as may be required.

AND, FURTHERMORE, , the said mortgagor , for and for heirs, executors, administrators and assigns, hereby covenant with the said mortgagee , and executors, administrators and assigns, that insurance against loss by fire shall be kept and maintained on the buildings on the premises aforesaid in such office or offices as the said mortgagee , and executors, administrators or assigns, shall approve, in a sum not less than dollars, and that the policy or policies of such insurance shall be assigned and transferred, or made payable in case of loss, to the said mortgagee , or executors, administrators or assigns, as collateral security hereto, and in default thereof, hereby agree that the said mortgagee , or executors, administrators or assigns, may effect such insurance in the name of the said mortgagor , and heirs and assigns, payable in case of loss to the said mortgagee , and executors, administrators or assigns, and that the premium or premiums paid therefor shall be a further charge upon said granted premises, secured by these presents.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , in the year of our Lord one thousand nine hundred and .

[Signatures and seals.]

Signed and sealed in presence of

[Signatures.]

, the undersigned, having received full payment and satisfaction of the within mortgage recorded in the records of land evidence in the of , in the state of Rhode Island, in Book number . at page , hereby cancel and discharge the same. And covenant to and with the person making said payment that the present owner of said mortgage.

[Signatures.]

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , A. D. 19

[Signatures and seals.]

SOUTH CAROLINA.

No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed; but the mortgagor shall be deemed owner of the land, and the mortgagee as owner of the money lent or due, and shall be entitled to recover satisfaction for the same out of the land by foreclosure and sale according to law: *Provided*, That notwithstanding the foregoing provision all releases of the equity of redemption shall be binding and effectual in law. Code of Laws of 1902, § 2374.

All contracts secured by mortgage of real estate situate within this State shall be subject to and construed by the laws of this State regulating the rate of interest allowed, and in all other respects, without regard to the place named for the performance of the same. *Ibid.*, § 1661.

1401. Mortgage of Real Estate.

THE STATE OF SOUTH CAROLINA, }
 County of . }

TO ALL TO WHOM THESE PRESENTS MAY CONCERN, SEND GREETING: WHEREAS, , the said in and by certain bond or obligation bearing date the , stand, firmly held and bound unto in the penal sum of , conditioned for the payment of the full and just sum of , as in and by the said bond and condition thereof, reference being thereunto had, will more fully appear.

NOW KNOW ALL MEN, that , the said , in consideration of the said debt and sum of money aforesaid, and for the better securing the payment thereof to the said , according to the condition of the said bond ; and also in consideration of the further sum of three dollars, to , the said , in hand, well and truly paid by the said , at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said [*here insert description*].

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises unto the said , heirs and assigns forever. And do hereby bind , heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said , heirs and assigns, from and against , heirs, executors, administrators, and assigns, lawfully claiming, or to claim, the same or any part thereof.

AND IT IS AGREED, by and between the said parties, that the said mortgagor , heirs, executors or administrators, shall and will forthwith insure the house and buildings on said lot and keep the same insured from loss or damage by fire, and assign the policy of insurance to the said , executors, administrators, or assigns, and in case he or they shall at any time neglect or fail so to do then the said mortgagee , executors, administrators, or assigns, may cause the same to be insured in their own name, and reimburse themselves for the premium and expenses of such insurance under the mortgage.

PROVIDED, ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these presents, that if , the said , do and shall well and truly pay or cause to be paid unto the said , the said debt, or sum of money aforesaid, with the interest thereon, if any shall be due, according to the true intent and meaning of the said bond and condition thereunder written, and all sums of money provided to be paid by the mortgagor , heirs, executors, administrators or assigns, under the covenants of this mortgage, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue. AND IT IS AGREED by and between the said parties that to hold and enjoy the said premises until default of payment shall be made.

And it is further agreed and covenanted by and between the said parties

that until the debt hereby secured be paid the said mortgagor, heirs, executors, administrators or assigns, shall and will pay all taxes on the property hereby mortgaged, when due and payable, and in case fail to do so, the said mortgagee, executors, administrators or assigns, may pay said taxes together with any costs or penalties incurred thereon or any part thereof, and reimburse for the same under this mortgage.

And it is further agreed and covenanted between the said parties that in case the debt secured by this mortgage or any part thereof is collected by suit or action or this mortgage be foreclosed, or put into the hands of an attorney for collection, suit, action or foreclosure, the said mortgagor, heirs, executors, administrators or assigns, shall be chargeable with all costs of collection, including per cent. of the principal and interest on the amount involved as attorney's fees, which shall be due and payable at once, which charges and fees together with all costs and expenses are hereby secured and may be recovered in any suit or action hereupon or hereunder.

WITNESS hand and seal this day of , in the year of our Lord one thousand nine hundred and , and in the one hundred and year of the sovereignty and independence, of the United States of America.

[Signatures and seals.]

Signed, sealed and delivered in the presence of

[Signature.]

1402. Mortgage of Real Estate.

THE STATE OF SOUTH CAROLINA.

TO ALL WHOM THESE PRESENTS MAY CONCERN, , in the state aforesaid, send greeting:

WHEREAS, , he said (hereinafter also styled the mortgagor), in and by certain bond or obligation bearing even date herewith, stand firmly held and bound unto (hereinafter also styled the mortgagee), in the penal sum of dollars, conditioned for the payment in lawful money of the United States of America of the full and just sum of , as in and by the said bond and conditions thereof reference being thereunto had will more fully appear.

NOW KNOW ALL MEN, that , the said , in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said bond; which with all its provisions is hereby made a part hereof; and also in consideration of three dollars to the said mortgagor in hand well and truly paid, by the said mortgagee, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said [description] together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises unto the said , heirs and assigns, forever.

And do hereby bind sel and heirs, executors and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unincumbered, and also to warrant

and forever defend all and singular the said premises unto the said mortgagee, and assigns, from and against and heirs, executors and administrators, and all other persons lawfully claiming, or to claim the same, or any part thereof.

AND IT IS AGREED, by and between the parties hereto, that the said mortgagor, heirs, executors or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss and damage by fire, for the benefit of the said mortgagee, for an amount not less than dollars, in such company as shall be approved by the said mortgagee, and shall deliver the policy to the said mortgagee, and in default thereof, the said mortgagee, or assigns, may effect such insurance and reimburse themselves under this mortgage for the expense thereof, with interest thereon from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said mortgagee, or assigns, shall be entitled to receive from the aggregate of the insurance moneys to be paid, a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the said parties, that if the said mortgagor, heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the said mortgagee, or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED, by and between the said parties, that upon any default being made in the payment of the interest on the said bond, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, that then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of the said mortgagee, or assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, that if the holder of the bond secured hereby is compelled to pay any taxes upon the debt represented by the said bond, or by this mortgage, then, and in that event, unless the said taxes are paid by some party other than the said holder, that then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due at the option of the said mortgagee, or assigns, although the period for its payment may not then have expired.

AND IT IS AGREED, by and between the said parties, that should legal proceedings be instituted for the collection of the debt secured hereby, then, and in that event, the said mortgagee, its successor or assigns, shall have the right to have a receiver appointed of the rents and profits of the above described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings, and the execution of the said trust as receiver, shall apply the residue of the said rents and profits toward the payment of the debt secured hereby.

AND IT IS FURTHER AGREED, by and between the said parties, that should

legal proceedings be instituted for the foreclosure of this mortgage, or for any purpose involving this mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expenses incurred by the mortgagee, or assigns, including a reasonable counsel fee (of not less than ten per cent. of the amount involved), shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these presents, that if the said mortgagor, heirs, executors or administrators, shall pay, or cause to be paid, unto the said mortgagee, certain attorneys, or assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by the said mortgagee, or assigns, according to the conditions and agreements of the said bond, and of this mortgage, and shall perform all the obligations according to the true intent and meaning of the said bond and mortgage, and the conditions thereunder written, then this deed of bargain and sale shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties, that the said mortgagor to hold and enjoy the said premises until default of payment shall be made.

WITNESS hand and seal this day of , in the year of our Lord one thousand nine hundred and , and in the one hundred and year of the sovereignty and independence of the United States of America.

[Signatures and seal.]

Signed, sealed and delivered in the presence of

[Signature.]

STATE OF SOUTH CAROLINA, }
County. }

I, , a notary public, do hereby certify unto all whom it may concern, that Mrs. , the wife of the within named , did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released.

[Signature.]

GIVEN under my hand and seal this day of , A. D. 19

[Signature and seal.]

SOUTH DAKOTA.

A mortgage of real property may be made in substantially the following form:

1403. Mortgage, Statutory Form.

This mortgage, made the day of , in the year , by A. B., of , mortgagor, to C. D., of mortgagee, WITNESSETH:

That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of dollars, on (or, before) the

day of _____, in the year _____, with interest thereon [or, as security for the payment of obligation, *describing it, etc.*].

A. B.

Civil Code of 1903, § 2063.

The mortgage of every real estate mortgage shall state therein his post office address before recording the same. *Ibid.*, § 2066.

1404. Mortgage.

THIS INDENTURE OF MORTGAGE, made and entered into this _____ day of _____, A. D. 19____, by and between _____, of the county of _____, and _____, part of the first part, and _____, of the county of _____, and _____ part of the second part: WITNESSETH, that the said part _____ of the first part for and in consideration of the sum of one dollar, and of the indebtedness hereinafter mentioned, ha _____ given, granted, bargained, sold and conveyed, and by these presents do _____ give, grant, bargain, sell and convey unto said part _____ of the second part, _____ heirs and assigns forever, the following described piece or parcel of land, lying and being in the county of _____, state of South Dakota, to wit: [*description*] with all the appurtenances and improvements thereunto belonging.

To HAVE AND TO HOLD the same to the part _____ of the second part, _____ heirs and assigns forever, hereby covenanting that the said part _____ of the first part, at the time of the delivery of these presents, _____ well seized of the premises above described, of perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear of all incumbrance whatever _____. And that _____ will ever warrant and defend the same to the part _____ of the second part, _____ heirs and assigns, against all claims whatsoever. And the said part _____ of the first part hereby relinquish all _____ right of homestead in _____ and to the above described premises.

THIS GRANT is intended as security for the payment of _____ certain _____, bearing date _____, executed by _____, the said part _____ of the first part to the part _____ of the second part, and drawing interest at the rate of _____ per cent. per annum until paid.

_____ payable at _____, and are intended to be secured by this mortgage. And the said part _____ of the first part hereby agree to pay all taxes that have been or may be assessed upon said premises, and also at _____ own expense to keep the buildings on said property insured against fire in a good and reputable insurance company for the benefit of said part _____ of the second part, to the extent of \$ _____, until this mortgage is paid or otherwise extinguished; and in case it shall become necessary for the part _____ of the second part, _____ heirs or assigns, to pay the taxes or insurance on the aforesaid property, the part _____ of the first party hereby agree to refund to the part _____ of the second part, _____ heirs or assigns, all sums so expended; with interest at the rate of _____ per cent. per annum, and this mortgage shall be security for all sums so expended.

Now, THEREFORE, if the said part _____ of the first part shall well and truly pay or cause to be paid the sum of _____, including the principal and in-

terest thereon as aforesaid, at the times promptly as aforesaid, then this indenture shall be null and void, else of full force and virtue. If the said part of the first part shall fail to pay any portion of the above mentioned sums, either principal or interest, promptly, and at the times they shall become due respectively as aforesaid, or shall neglect to pay all taxes assessed or to be assessed on said property, before the same shall become delinquent, or shall neglect to keep the buildings on said property insured as herein specified, then the whole sum, both principal and interest, shall at once become due and collectible, and in that case, said part of the second part, either by or agent, shall have the right to enter upon and take possession of said premises, and sell the same in the manner now or that may hereafter be provided by law, and out of the proceeds of such sale first paying the expenses thereon, and all expenses whatever that may accrue by reason of such sale, then deducting therefrom the amount of said debt and interest and all the aforesaid taxes and insurance, with interest thereon at the rate aforesaid, rendering unto said part of the first part the surplus, if any, and it is expressly understood and agreed that the said second part may become the purchaser at said sale if so choose. And for the purpose of effecting such sale, and making to the purchaser a good and effective title, the said part of the first part has constituted and appointed, and by these presents do constitute and appoint, the part of the second part, or any agent may select and appoint for that purpose, true and lawful attorney, for and name and stead, to sell said premises as aforesaid, and to make to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance, with full covenants of warranty to the same extent and in like manner as the said part of the first part might do if personally present, with full power of substitution to said second part and without power of revocation by said part of the first part.

IN WITNESS WHEREOF, the said part of the first part has hereunto set hand and seal the day and year above written.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

TENNESSEE.

The statutory form is prescribed by section 3680 of the Code of 1896, and is as follows:

1405. Mortgage, Statutory Form.

I hereby convey to A B the following land: [*describe it*], to be void upon condition that I pay, etc.

Dated the day of, 19 .

[Signature and seal.]

1406. Deed of Trust, Statutory Form.

For the purpose of securing to A. B. a note of this date, due at twelve months, with interest from date [*or, as the case may be*], I hereby convey to C. D., in trust the following property [*describing it*]. And if the note is not paid at maturity, I hereby authorize C. D. to sell the property herein

conveyed [*stating the manner, place of sale, notice, etc.*], to execute a deed to the purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.

Code of 1896, § 3680.

In all cases where money is loaned in this state, whether to residents or nonresidents, and is secured wholly by mortgage or trust deed on property, real or personal, situated in some other state, the lender may contract for any rate of interest allowed by the law of the state where the property pledged as security is situated; but, in case of deficiency judgment no recovery on same can be had unless the excess interest over the legal rate in this state be allowed as a credit on said deficiency judgment. Supplement 1897-1903, to Code, pp. 566, 567, ch. 60 of 1901.

1407. Deed of Trust.

FOR AND IN CONSIDERATION of one dollar to paid, the receipt of which is acknowledged, and the other considerations hereinafter mentioned, have this day bargained and sold, and do hereby transfer and convey, to and his successors in trust, certain property in the state of Tennessee, county, , described as follows, to wit: [*description*]

TO HAVE AND TO HOLD said property to the said , trustee, and his successors in trust, forever. covenant that lawfully seized of the said property, have a good right to convey it, and that the same is unincumbered.

 further covenant and bind heirs and representatives to warrant and defend the title to said property to the said , or his successor in trust, and his assigns, forever, against the lawful claims of all persons.

But this conveyance is made in trust for the following uses and trusts, and for no other purpose, to wit: [*state terms of debt, etc.*]

Now, if shall pay the sum aforesaid when due, according to the terms of said note, then this instrument is to be of no further force or effect. But if fail to pay the said sum of money when due, as aforesaid, or any part of said sum, according to the terms above expressed, then, upon such default, this conveyance remains in full force and effect, and the said trustee, or his successor in trust, is hereby authorized and empowered, upon giving days' notice, by publication in , county, Tennessee, to sell said property at the court-house door in said county, to the highest bidder, for cash, and free from the equity of redemption, homestead, dower, and all other exemptions of every kind, which are hereby expressly waived, and the said trustee, or his successor in trust, is authorized to make a deed to the purchaser. The creditor may bid at any sale under this conveyance. agree that the trustee may, at any time after default in payment of principal or interest as each falls due respectively, enter and take possession of said property, and shall only account for net rents received by him.

And agree to keep all the buildings on said property insured in some reliable fire insurance company or companies for the sum of \$, until the sum herein secured is fully paid, and to have the loss made payable on the policy to said trustee for the benefit of the owners and holders of the debt herein secured. agree to keep the improvements on said property

in good repair and preservation, and to pay all taxes and assessments, and to pay them when due; and in case fail to do either, then said trustee, or the creditor herein secured, may do either, and charge and treat the amount so expended as part of the debt herein secured.

In case of sale under this deed of trust, the proceeds will be applied by the trustee,

First. To pay all the costs and charges of executing this trust, including attorney's fees and the expense of any litigation which may arise on account of the execution and enforcement of this trust.

Second. To pay said debt, or any balance thereof then remaining unpaid.

Third. The residue to be paid to , or order. And in case of the death, absence, inability, or refusal to act of the said trustee at any time when action under the foregoing powers and trusts may be required, the owner of the debt herein secured is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to shall be vested in said successor.

This day of , 19 .

[Signatures.]

1408. Real Estate Mortgage.

FOR THE CONSIDERATIONS hereinafter named, of county, , have this day bargained and sold, and do hereby bargain, sell, grant, and convey unto of county, , a certain of land, laying in the town of , in the civil district of county, bounded as follows: Beginning, etc., [description] containing acres, more or less, being the same conveyed by to by deed dated , 19 , and registered in the register's office of county, in deed book , page , and now occupied by .

TO HAVE AND TO HOLD unto said , he heirs, assigns, and grantees, in fee simple, forever, covenant that lawfully seized of said property and that the same is unincumbered, and h have the right to convey it, together with all the rights, privileges, easements, hereditaments, and appurtenances belonging or in anywise appertaining thereto, in trust, as hereinafter specified. In the event of a sale of said property under and by virtue of this trust, then the said part of the first part, and all persons holding under shall be and become the tenants at will of the purchaser of the same. from and after the execution and delivery of a deed to such purchaser, said tenancy to be determined at the option of said purchaser upon five days' written notice.

also do hereby sell and deliver unto said the following personal property, to wit: [description], to have and to hold in trust as hereinafter specified.

The purposes of this conveyance are as follows: The said indebted to by , dated , 19 , due , 19 , in the sum of \$, bearing interest from , 19 , and desire to secure the payment thereof, and this conveyance is made for that purpose only.

Now, if said should pay off and discharge said on or before , 19 , the maturity thereof, and shall also pay the costs, fees, and

expenses of making and executing this trust, on or before that date, including a fee of \$ to for writing this conveyance, the same shall thereupon become void, and the legal title to said property shall immediately revert to said , but if said should not pay the same on or before the date aforesaid, then the said or agent, after advertising as required by law, shall sell said land at for cash, to the highest bidder, free from the equity of redemption, which is hereby expressly waived, and execute all proper conveyances to the purchasers; and said , or agent, shall also sell said personal property, publicly or privately, for cash, and the proceeds shall be applied as follows:

FIRST.—To the payment of the fees and expenses of making and executing this trust;

SECONDLY.—To the payment of said above referred to and described;

THIRDLY.—The surplus, if any, will be paid to said or order.

do hereby expressly waive all right to homestead in said land, and said hereby expressly waives all right to dower in said land if her husband, said , should die before the foreclosure of this trust.

Said retain possession of the property hereby conveyed until . Provided, that said , or his agent, may take possession thereof at any time hereafter if necessary to secure the same for the purposes of this trust.

[Signature.]

IN WITNESS, etc.

[Signature.]

1409. Deed of Trust.

FOR AND IN CONSIDERATION of one dollar to paid, the receipt of which is acknowledged, and the other considerations hereinafter mentioned, have this day bargained and sold, and do hereby transfer and convey, to and his successors in trust, certain property in the state of Tennessee, county, , described as follows, to wit: [description]

To HAVE AND TO HOLD said property to the said trustee, and his successors in trust, forever. covenant that lawfully seized of the said property, have a good right to convey it, and that the same is unincumbered.

 further covenant and bind heirs and representatives, to warrant and defend the title to said property to the said , or his successor in trust, and his assigns, forever, against the lawful claims of all persons.

But this conveyance is made in trust for the following uses and trusts, and for no other purpose, to wit: [describe terms of trust]

Now, if shall pay the sum aforesaid when due, according to the terms of said note, then this instrument is to be of no further force or effect. But if fail to pay the said sum of money when due as aforesaid, or any part of said sum, according to the terms above expressed, then, upon such default, this conveyance remains in full force and effect, and the said trustee, or his successor in trust, is hereby authorized and empowered, upon giving days' notice, by publication in county, Tennessee, to sell said property at the court-house door in said county, to the highest bidder, for cash, and free from the equity of redemption, homestead, dower, and all other exemptions of every kind, which are hereby expressly waived, and the

said trustee, or his successor in trust, is authorized to make a deed to the purchaser. The creditor may bid at any sale under this conveyance. agree that the trustee may, at any time after default in payment of principal or interest as each falls due respectively, enter and take possession of said property, and shall only account for net rents received by him.

And agree to keep all the buildings on said property insured in some reliable fire insurance company or companies for the sum of \$ until the sum herein secured is fully paid, and to have the loss made payable on the policy to said trustee for the benefit of the owners and holders of the debt herein secured. agree to keep the improvements on said property in good repair and preservation and to pay all taxes and assessments, and to pay them when due; and in case fail to do either, then said trustee, or the creditor herein secured, may do either, and charge and treat the amount so expended as a part of the debt herein secured.

In case of sale under this deed of trust, the proceeds will be applied by the trustee:

First. To pay all the costs and charges of executing this trust, including attorney's fees and the expense of any litigation which may arise on account of the execution and enforcement of this trust.

Second. To pay said debt, or any balance thereof then remaining unpaid.

Third. The residue to be paid to , or order. And in case of the death, absence, inability, or refusal to act of the said trustee at any time when action under the foregoing powers and trusts may be required, the owner of the debt herein secured is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to shall be vested in said successor.

In the event of a sale of said property under and by virtue of this trust, then the said part of the first part, and all persons holding under shall be and become the tenants at will of the purchaser of the same, from and after the execution and delivery of a deed to such purchaser, said tenancy to be determined at the option of said purchaser upon five days' written notice.

[Signatures.]

This day of , 19 .

[Signatures.]

TEXAS.

No power of sale conferred by deed of trust or mortgage on real estate shall be enforced after the expiration of ten years from the maturing of the indebtedness secured thereby; and any sale under such power after the expiration of such time shall be void, and such sale may be enjoined. Supplement of 1906 to Sayles' Civil Statutes, p. 314, Act 1905, p. 334.

For form of note, see form No. 1562.

1410. Deed of Trust.

THE STATE OF TEXAS, }
County of . }

KNOW ALL MEN BY THESE PRESENTS, that , of the county of , in the state of , for and in consideration of the sum of dollars,

to in hand paid by , of the county of , in the state of , the receipt of which is hereby acknowledged, have sold, and by these presents do sell, transfer, convey and confirm unto the said , and to his successors in this trust, the following described property, to wit: [*description*] together with all and singular the rights, members, hereditaments and appurtenances to the same in any manner belonging or appertaining.

TO HAVE AND TO HOLD, all and singular, the property above described unto the said , or substitute, forever. And do by these presents bind , heirs, executors and administrators, to warrant and forever defend, all and singular, the said property unto the said , or substitute herein, against the claim or claims of any and all persons whomsoever, claiming or to claim the same, or any part thereof.

THIS CONVEYANCE, HOWEVER, IS INTENDED AS A TRUST for the better securing of , of the county of , and state aforesaid, in the payment of certain promissory note of which the following is a substantial copy: [*here insert copy*] bearing interest at the rate of per cent. per annum from . Upon payment of which said promissory note according to face and tenor, being well and truly made, then, in such case, this conveyance is to become null and of no further force or effect, and shall be released at the cost and expense of the said . But, in case of failure or default in the payment of said promissory note , together with the interest thereon accrued, according to terms and face, at the maturity of the same, then, in such event, said is by these presents fully authorized and empowered, and it is made his special duty, at the request of the said , at any time made after the maturity of said promissory note , to sell the said above described property to the highest bidder, for cash, at public outcry, in front of the court-house door of said count on the first Tuesday of any month, between the hours of 10 o'clock A. M., and 4 o'clock P. M., first giving notice of the time, place and terms of sale for at least twenty days successively next before the day of sale, by posting up written or printed notices of such sale at three public places in the count of , state of Texas, one of which shall be at the court-house door of , said count , and by giving such other notice as is or may be required by law, and after said sale as aforesaid, to make to the purchaser or purchasers thereof a good and sufficient deed in law to the property so sold, with the usual covenants and warrants, and to receive the proceeds of said sale, and the same to apply to the payment of said note , the interest thereof accrued, and the expenses of executing said trust, including per cent. commission to said trustee, holding the remainder thereof subject to the order of , the said . It is expressly agreed, that the recitals in the conveyance to the purchaser shall be full evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed; and it is hereby specially provided, that should the said , from any cause whatever, fail or refuse to act, or become disqualified from acting as such trustee, then the said shall have full power to appoint a substitute, in writing, who shall have the same powers as are

hereby delegated to the said , and do by these presents fully and absolutely ratify and confirm any and all acts which the said , or his substitute, as herein provided, may do in the premises by virtue hereof.

WITNESS hand this day of , A. D. 19 .

[Signatures.]

1411. Deed of Trust.

THIS INDENTURE, made this day of , in the year of our Lord one thousand nine hundred and , by and between , of the county of , and state of , part of the first part, and , trustee, of the county of , and state of , party of the second part, and the Company, of , state of , a corporation, party of the third part, WITNESSETH: That

WHEREAS, the said , being indebted to the said party of the third part for money loaned , ha executed the following promissory note , to wit: note for the sum of dollars, , due on the first day of , in the year , with per cent. interest per annum until maturity, and 10 per cent. interest per annum on the principal after maturity and on all interest installments from the time when due until paid; [*recite other notes*] all payable according to the terms and at the times stated in the said note ; and promissory note , aggregating dollars, payable according to the terms stated in said note , and in installments, as follows: with per cent. interest per annum on each installment from maturity till paid. The said note (and each of them) being dated the day of , 19 , and payable in gold coin of the United States of America, of the present standard of weight and fineness, to the said, the Company, or order.

Now, THEREFORE, the said part of the first part, for and in consideration of the said loan of money, and the further consideration of one dollar to paid by the party of the second part, the receipt of all of which is hereby acknowledged, do hereby grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his successors in trust forever, the following described real estate, situated in the county of , and state of , to wit: [*here insert description*]; together with all machinery now upon or which may be hereafter put upon said premises, whether attached or detached, to have and to hold the above-granted premises, together with the tenements, rights, hereditaments, members, appurtenances, and machinery, unto the said party of the second part and his successors in this trust forever:

IN TRUST, NEVERTHELESS, that in case of default in the payment of said notes or any part thereof, or of the interest thereon according to the terms thereof, or in case of the breach of any of the agreements or covenants herein mentioned, or in any case herein provided, then, on the application of the legal holder or holders (or any one or more of them) of said notes, the said trustee or his successors is hereby authorized and empowered to sell the property hereby conveyed, to the highest bidder, for cash in hand, at the

county court-house door in county, Texas, on the day and within the hours required by law, and after advertising according to law the time, place, and terms of said sale, and the property to be sold. And it is hereby agreed that the said trustee or his successors may sell said property together, or in lots or parcels, as to him shall seem expedient, and after said sale, as aforesaid, shall make, execute, and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds in law to the property so sold, in fee simple, and shall receive the proceeds of said sale and out of the same shall pay, first, all charges, costs, and expenses of executing this trust; second, the debt and all other sums of money due or to become due hereunder, with interest as agreed, in such priority as he may determine; and, third, shall render the overplus (if any) unto the said part of the first part, legal representatives or assigns, on reasonable request. And the said trustee or his successors may abandon the sale of the said premises, after having advertised the same, and such abandonment shall not be construed to impair the right of said trustee or his successors to readvertise and sell said premises upon continuance of said default or violation, or upon the occurrence of any default or violation thereafter; and at such sale or sales the legal owner or owners, or any one or more of them, of said notes may purchase.

And the said part of the first part do covenant with the said trustee and his successors and with the said party of the third part and its assigns as follows: that lawfully seized in fee simple of said premises; that good right to convey the same; that the same are free from all incumbrances; that will warrant and defend the title to the same against all lawful claims, and that will make such further assurances of the said premises as may be necessary to confirm the title to the same to the said trustee and his successors; and for the better securing of said notes described herein, principal, interest, penalties, and attorney's fee, do further covenant and agree, with the said trustee and his successors and with the said party of the third part and its assigns, to pay the sum named in said notes, according to the terms thereof, with interest as above specified; to permit no waste; to keep all of the improvements in as good repair as they now are; and to do, or permit to be done, to said premises nothing that may in any way impair or weaken the security under this instrument; to keep the buildings now on, or hereafter erected on said premises, insured for dollars in companies acceptable to, and with loss payable to the said trustee and his successors; to have the loss on all other policies on said buildings made payable to the said trustee or his successors; and to deliver all of the said policies to the said trustee or his successors; and to pay before the same shall become delinquent all taxes and assessments that may be laid within the state of Texas upon said premises or any part thereof.

And said part of the first part do further covenant to pay all taxes before the same become delinquent, which may be assessed within the state of Texas, against either the interest of the party of the second part, or the party of the third part in said premises, or against the note or debt secured hereby while held by a non-resident of this state, provided that if such taxes, together with the interest paid or agreed to be paid on such notes or debt,

shall exceed 10 per cent. per annum, then such part of the first part shall not pay such excess, unless it shall have been first decided by the courts of last resort in this state, that the payment of such excess is not usurious; in which event, the said part of the first part do covenant to pay the same on demand. But in no event is it the intention of this instrument, that said part of the first part shall pay for the forbearance of the debt hereby secured more than 10 per cent. per annum, together with such further charges as may be held to be legal, but any charges, in excess of 10 per cent. per annum which may be held to be illegal, shall not be collected from the part of the first part, but shall be paid by the party of the third part. And in case of failure to so repay such sum or sums, or so to insure and so to deliver such policies, or so to pay such taxes or assessments, or in case there exists any claim, lien, or incumbrance upon the said premises, which is prior to this trust deed, the said trustee or his successors may effect such insurance, and may pay such taxes or assessments, and may pay such claim, lien, or incumbrance, and the sum or sums of money which may be paid by the said trustee or his successors in any case above specified, with interest from the time of such payment at 10 per cent. per annum, shall be immediately due and payable, and shall become so much additional indebtedness, secured by this deed of trust.

In case, however, any money is received on account of loss under such insurance policies, such money may, at the option of the party of the third part, or its assigns, be either paid to the insured or applied upon the items of indebtedness secured hereunder, whether items be due or not, in such order as may be directed by the party of the third part or its assigns, and the said part of the first part do further covenant and agree, with the parties aforesaid, to pay the said trustee or his successors, for his services in case of any sale hereunder, a commission of 5 per cent. on the amount of the sale out of the proceeds thereof, and in addition his costs and expenses; and in case any other legal or equitable remedy is resorted to for the collection of the debt or sums herein mentioned, to pay 10 per cent. on such debt or sums, as attorney's fees, and to repay on demand any sums of money expended by the said trustee or his successors in any proceeding in law or equity affecting the title to or possession of the said premises, or in any probate or administrative proceeding affecting the debt or the premises aforesaid, together with his reasonable charges and attorney's fees.

AND IT IS STIPULATED AND AGREED, between the parties hereto, that in case of default in the payment of any one of the installments of principal or interest of the said notes, or in case of the violation of any one of the above conditions, agreements, or covenants, or in case any tax or assessment is assessed within the said state of Texas against the interest of the said trustee or his successors, or of the Company or its assigns, in said premises, or against the debt or notes secured hereunder while held by a non-resident, that then, and in either or any such case, the whole indebtedness hereby secured, principal, interest, penalties, and attorney's fees, as above or in said notes provided, shall, at the option of the legal holder or holders (or any one or more of them) of said notes, become immediately due and payable, without notice, and such holder or holders may proceed to collect the same by sale under this trust deed, or otherwise, as such holder or holders may elect.

And it is stipulated and agreed that, in case of any sale hereunder, all prerequisites to said sale shall be presumed to have been performed; and that in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the non-payment of the money secured, or as to the request to the trustee to enforce this trust, or as to the proper and due appointment of any substitute trustee, or as to the advertisement of sale, or time, place, and terms of sale, or as to any other preliminary act or thing, shall be taken, in all courts of law and equity, as *prima facie* evidence that the facts so stated or recited are true.

And, in consideration aforesaid, the part of the first part do hereby expressly waive and renounce the benefit of all laws, now existing or that may be hereafter enacted, providing for any appraisement before sale of any of the property hereby granted, commonly known as "appraisement laws," and also the benefit of all laws, that may be hereafter enacted, in any way extending the time for the enforcement of the collection of the debt hereby secured, or creating or extending a period of redemption from any sale made in collecting said debt, commonly known as "stay laws" and "redemption laws." and do hereby agree and contract that the laws of this state, save as above excepted, now in force relative to the collection of the debt hereby secured and the application to the payment thereof of the property hereby conveyed are expressly adopted and made a part hereof.

And it is expressly agreed that, by or because of any extension or extensions of the time of payment of any or all of the indebtedness secured hereby, or by or because of any payment made to said assured as aforesaid of any sum of insurance, the first lien hereunder, and the effect of this instrument shall not in anywise be altered or diminished, in favor of any junior incumbrancer or other party hereafter acquiring a lien on or interest in said real estate, or any part thereof, but that the first lien under this instrument, on all said land, shall continue until all sums, interest, and charges, as above provided, are fully paid.

AND IT IS FURTHER STIPULATED AND AGREED, that in case of the death, resignation, removal, or absence of the said party of the second part from the city of _____, or his refusal or failure or inability to act, then such person as may be appointed by the said the _____ Company, such appointment being evidenced by instrument, signed by the president of the said company, and recorded in the county where the above premises, or any part of them, are located, shall be and hereby is appointed and made successor in trust to the said party of the second part; and in case of the failure of the said the _____ Company to so appoint by such instrument, or in case of the death, resignation, refusal, failure, or inability to act of such person so appointed, then the acting sheriff of _____ county, state of Texas, shall be and hereby is appointed and made successor in trust. And the said part of the first part do hereby absolutely ratify and confirm any and all acts that the said trustee, or his successor in this trust, may lawfully do in the premises by virtue hereof.

It is further stipulated and agreed, that no release, quitclaim, or conveyance of this deed of trust, or of the debt hereby secured, shall be valid or sufficient, unless the said the _____ Company shall evidence its consent by joining in the instrument releasing, quitclaiming, or conveying such interest.

Said notes herein described are given in lieu and substitution of certain promissory note , executed by to , which a vendor's lien upon the premises herein described and set out in a deed of record in book , page , records of county, Texas, and said lien is hereby continued on said land to secure the payment of the notes first herein mentioned.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand the day and year first above written.

[Signatures and seals.]

In the presence of

[Signatures.]

UTAH.

A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. Complied Laws of 1907, § 3517.

A mortgage substantially in the form prescribed in this section, when executed as required by law, shall have the effect of a conveyance of the land therein described, together with all the rights, privileges, and appurtenances thereunto belonging, to the mortgagee, his heirs, assigns, and legal representatives, for the payment of the indebtedness therein set forth, with covenant from the mortgagor that all taxes and assessments levied and assessed upon the land described during the continuance of the mortgage, shall be paid previous to the day appointed for the sale of such lands for taxes, and may be foreclosed as provided by law and with the same effect, upon any default being made in any of the conditions thereof as to payment of either principal, interest, taxes, or assessments. Ibid., § 1983.

For form of note, see Form No. 1563.

1412. Mortgage on Real Property, Statutory Form.

(Compiled Laws of 1907, § 1983.)

A B, mortgagor [hereinsert name or names, and place of residence], hereby mortgages to C D mortgagee [here insert name or names, and place of residence], for the sum of dollars, the following-described tract of land in county, Utah [here describe the premises].

This mortgage is given to secure the following indebtedness [here state amounts and form of indebtedness, maturity, rate of interest, by and to whom payable, and where].

The mortgagor agrees to pay all taxes and assessments on said premises and the sum of dollars attorney's fee in case of foreclosure.

WITNESS the hand of said mortgagor this day of , A. D. 19 .

1413. Deed of Trust.

[As in Form 1375, to * and from thence as follows:] together with all the rights to the use of water for irrigating said premises, and for domestic use thereon, to which the said part of the first part, or the premises hereby conveyed, are now or may hereafter become entitled, or which now are or may hereafter be used on said premises, however the same may be evidenced, and together with all shares of stock or shares of water in any ditch or irrigation company which in any manner entitle said part of the first part to water for irrigating or domestic purposes upon said premises:

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, unto the said party of the second part and his successors forever.

IN TRUST NEVERTHELESS, that in case of default in the payment of said notes, or any part thereof, or of the interest thereon according to the terms thereof, or in case of the breach of any of the agreements or covenants herein mentioned, or in any case hereinafter provided, then, on the application of the legal holder of said notes, or any one of them, the said trustee or his successors is hereby authorized and empowered to enter upon, possess, hold, and enjoy the above premises, and, either with or without such entry, to sell and dispose of the said premises, and all water or irrigation rights aforesaid, or shares of stock in any ditch or irrigation company, and all the right, title, benefit, and equity of redemption of the part of the first part, heirs, executors, administrators, or assigns therein, at public auction, at the front door of the county court-house or any building then used for that purpose in the county where the said premises, or any part thereof, are situate, or on said premises, or any part thereof, or at the front door of the county court-house or any building then used for that purpose in Salt Lake county, in said state of Utah, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, at least four weeks' notice having been given of such sale by advertisement, published once a week, in any daily or weekly newspaper at that time published in the county in which said premises, or any part thereof, are situated, or at that time published in said county of Salt Lake, and to make, execute, and deliver to the purchaser or purchasers, at such sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale shall pay: first, all charges and expenses of executing this trust; second, the debt and all other sums of money due or to become due hereunder, with interest as agreed, in such priority as he may determine; and, third, shall render the overplus (if any) unto the said part of the first part, legal representatives or assigns, on reasonable request. And the said trustee, or his successors, is hereby authorized and empowered to dismiss or not to make any such sale, and the authority and powers given hereunder shall not be discharged by their exercise in case of any default or violation, but may again be exercised as often as any default or violation may occur; and at any such sale he may sell the said premises in whole or in separate parcels as he may prefer or think best; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said part of the first part, and all other persons claiming the premises aforesaid, or any part thereof, by, from, or under said part of the first part, or any of them, and at any such sale or sales the legal owner or owners, or any one or more of them, of said notes, may purchase.

And the said part of the first part do covenant with the said trustee or his successors, and with the said party of the third part and its assigns, as follows: That lawfully seized in fee simple of said premises; that good right to convey the same; that the same are free from all incumbrances; that will warrant and defend the title to the same against all lawful claims, and that will make such further assurances of the said premises as may be necessary to confirm the title to the same to the said trustee and

his successors; and do further covenant and agree, with the said trustee and his successors, and with the said party of the third part and its assigns, to pay the sum named in said notes, according to the terms thereof, with interest as above specified; to keep the improvements in as good repair as they now are; to permit no waste; and to do, or permit to be done, to said premises, nothing that may in any way impair or weaken the security under this instrument; to preserve, protect, and perfect all water rights hereby conveyed; to pay, before the same shall become delinquent, all taxes or assessments that may become chargeable within the said state of Utah, against said premises, or any part thereof, or against the interest of the said trustee or his successors, or of the Company, or its assigns therein, or against the notes or debt secured hereby while held by a non-resident, and to pay when due all assessments on the ditch, or water rights, or shares of stock hereby or otherwise conveyed to secure the above notes, and to keep the buildings, now on or hereafter erected on said premises, insured for dollars in companies acceptable to, and with loss payable to the said trustee and his successors; to have the loss on all other policies on said buildings made payable to the said trustee and his successors, and to deliver all of the said policies to the said trustee or his successors; and in case of failure so to pay such sum or sums, or so to pay said taxes or assessments, or so to insure and to deliver such policies, or in case there exists any claim, lien or incumbrance upon the said premises, which is prior to this trust deed, the said trustee or his successors may effect such insurance and may pay such taxes or assessments and may pay such claim, lien, or incumbrance; and the sum or sums of money which may be paid by the said party of the second part or his successors in any case specified, with interest from the time of such payment at [12] per cent. per annum, shall be immediately due and payable, and shall become so much additional indebtedness, secured by this deed of trust; provided, that in case any money is received on account of loss under such insurance policies, such money may, at the option of the party of the third part or its assigns, be either paid to the insured or applied upon the items of indebtedness secured hereunder, whether such items be due or not, in such order as may be directed by the party of the third part or its assigns, and the said part of the first part do further covenant and agree with the parties aforesaid, to pay the said trustee or his successors, for his services, in case of any sale hereunder, a commission of 5 per cent. on the amount of the sale out of the proceeds thereof, and in addition his costs and expenses; and in case any other legal or equitable remedy is resorted to for the collection of the debt or sums herein mentioned, to pay 5 per cent. on such debt or sums as attorney's fees, and to repay on demand any sum of money expended by the said trustee or his successors, in any proceeding in law or equity affecting the title to or possession of the said premises, or affecting the right to the use of water for irrigating purposes thereon, or in any probate or administrative proceeding affecting the debt or the premises aforesaid, together with his reasonable charges and attorney's fees.

AND IT IS STIPULATED AND AGREED, between the parties hereto, that in case of default in the payment of any one of the installments of principal or interest of said notes, or in case of the violation of any one of the above conditions, agreements, or covenants, or in case any tax or assessment is assessed within

the said state of Utah against the interest of the said trustee or his successors, or of the Company or its assigns in said premises, or against the debt or notes secured hereunder while held by a non-resident, or in case the irrigation or cultivation of the said premises, or the payment of any assessment on said water shares or stock is so neglected as, in the judgment of the said trustee or his successors, to jeopardize the water rights intended to be conveyed above by this instrument, or conveyed by any other instrument to secure the above notes, that then, and in either or any such case, the whole sum hereby secured, and interest thereon as agreed, shall, at the option of the legal holder of said notes or any one of them, become immediately due and payable without notice, and such holder may proceed to collect the same under this trust deed, or otherwise, as they may elect.

And, in consideration aforesaid, the said part of the first part do hereby expressly waive and renounce the benefit of all laws now existing, or that may be hereafter enacted, providing for any appraisal before sale of any of the property hereby conveyed, commonly known as "appraisement laws," and also the benefit of all laws, that may be hereafter enacted, in any way extending the time for the enforcement of the collection of the debt hereby secured, or creating or extending a period of redemption from any sale made in collection of said debt, commonly known as "stay laws" and "redemption laws."

AND IT IS FURTHER AGREED, and especially understood, that in case of the death, resignation, removal, or absence of the said party of the second part from the state of Utah, or his refusal, or failure, or inability to act, or his removal from office by resolution of the board of trustees of the Company (a certified copy of which resolution shall be filed in the office of the county recorder of the county in which said premises, or some part thereof, are situated) then such person as may be appointed by the said the Company, such appointment being evidenced by an instrument, signed by the president of the said company, and recorded in the county where the above premises, or any part of them, are located, shall be and hereby is appointed and made successor in trust to the said party of the second part, and in the case of the failure of the said the Company so to appoint by such instrument, or in case of the death, resignation, refusal, failure, or inability to act of such person so appointed, then the acting sheriff of county, state of Utah, shall be and hereby is appointed and made successor in trust; and in either such event the said lands and premises shall become vested in such new trustee, and all the power, authority, terms, conditions, and stipulations herein contained shall accrue to and be exercised by such new trustee, the same as if he had been made the party of the second part herein.

It is further agreed, that no release, quitclaim, or conveyance of the interest acquired by the said trustee or his successors in and to the above-described premises or water rights shall be valid or sufficient, unless the said the Company shall evidence its consent by joining in the instrument releasing, quitclaiming, or conveying such interest.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed, sealed, and delivered in the presence of

[Signatures.]

VERMONT.

1414. Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS: that , of , in the county of , and state of Vermont, for the consideration of dollars received to full satisfaction of , of , in the county of , and state of , do give, grant, bargain, sell and confirm unto the said , heirs and assigns, a certain parcel of land situated in [description]

TO HAVE AND TO HOLD the above granted and bargained premises with the appurtenances thereof unto , the said heirs and assigns forever, to them and their own proper use, benefit and behoof; and also , the said do for , heirs, executors and administrators, covenant with the said , heirs and assigns, that at and until the ensealing of these presents well seized of the premises, as a good indefeasible estate, in fee simple, and have good right to bargain and sell the same in manner and form as above written, and that the same is free from all incumbrances whatsoever; and furthermore , the said , do by these presents bind and heirs forever to warrant and defend the above granted and bargained premises to the said , heirs and assigns, against all claims and demands whatsoever.

PROVIDED, NEVERTHELESS, that if the said , heirs, executors or administrators, shall well and truly pay, or cause to be paid, to the said , heirs, executors, administrators or assigns, the sum of dollars, specified in promissory note signed by , dated , and shall at all times keep the buildings on said land satisfactorily insured against loss by fire, for the benefit of the mortgagee herein, and also pay when due all taxes and assessments upon said premises, then this deed to be null and void, otherwise to remain in full force and virtue. And in case of failure to keep said buildings so insured, or to pay such taxes or assessments when due, the legal holder of this mortgage shall have the right to cause such buildings to be so insured in the owner's name and to pay such taxes and assessments when due, adding the proper expense thereof to the principal sum secured under this mortgage.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of , A. D. 19 .

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signature.]

DISCHARGE.

The debt secured by the within mortgage having been paid in full, said mortgage is hereby discharged, at the city of , in the county of , and state of Vermont, on this day of , 19 .

[Signature and seal.]

Witness,

[Signature.]

VIRGINIA.

1415. Deed of Trust, Statutory Form.

(Code of 1904, § 2441.)

THIS DEED, made the day of , in the year , between [the grantor], of the one part, and [the trustee], of the other part, WITNESSETH: That the said [the grantor], doth [or, do], grant unto the said [the trustee] the following property [*here describe it*]: In trust to secure [*here describe the debts to be secured, or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon*].

WITNESS the following signatures and seals [*or, signature and seal*].

A similar form is prescribed in West Virginia by § 3052 of the Code of 1906.

1416. Deed of Trust.

THIS DEED, made this day of , in the year 19 , between , of , part of the first part, and , of , part of the second part,

WITNESSETH: that said part of the first part do grant, with general warranty, unto the said part of the second part, the following property, to wit: [*description*]

IN TRUST, to secure to the holder of the hereinafter described note the payment of the sum of dollars.

IN THE EVENT THAT DEFAULT SHALL BE MADE in the payment of the note hereinbefore mentioned, or any installment of taxes or levies on said real estate, or in any insurance premium on the improvements thereon, when, and as the same or any of them, shall become due and payable (and such taxes and levies are to be construed as due and payable on the day preceding that on which any penalty is by law added thereto), then the trustee, or either of them, on being required so to do by the holder of said note, shall sell the property hereby conveyed.

AND IT IS COVENANTED AND AGREED between the parties aforesaid, that in case of a sale, the same shall be made at public auction, , or at such other place as may be determined by the trustee after first advertising the time, place and terms of sale for , and upon the following terms, to wit: For cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees of drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said , and if there be any residue of said purchase money, the same shall be made payable at such time and secured in such manner as the said part of the first part, executors, administrators or assigns, shall prescribe or direct, or in any case of failure to give such direction, at such time and in such manner as the said trustee shall think fit.

The said part of the first part covenant to pay all taxes, levies, dues and charges upon the said property hereby conveyed, so long as the debt hereby secured remains unpaid, and to keep the improvements upon said property constantly insured in some good and responsible insurance company

in the sum of not less than \$ _____, for the benefit of the holder of the said note hereby secured as above stated, and to deliver the said policy or policies to the said trustee and agree _____, upon _____ failure so to do, that the holder of said note may, if he or they see fit, effect insurance upon said improvements, or any of them, in such sum, not exceeding said \$ _____, as he or they may deem adequate for the security of the debt hereby secured; but it shall not be incumbent upon the holder of said note to effect or renew any insurance upon said improvements, or to pay any taxes on said property, but that all premiums and taxes paid therefor, if any, with interest from the time of payment, shall constitute a lien under and by virtue of this deed on the property hereby conveyed, and in event of sale shall be treated as a part of the debt secured by this deed, and as a part of the cost of executing this trust, and if there be no sale under this deed, then all such premiums, taxes and levies are to be recoverable by all the remedies at law, or in equity, by which the debt aforesaid may be recoverable, and the part _____ of the first part hereby waives the benefit of _____ homestead exemption as to the debt secured by this deed and any expenditure for taxes, levies or insurance premiums by the holders of said notes in pursuance of this deed.

IF NO DEFAULT SHALL BE MADE in the payment of the above-mentioned _____ or insurance premiums, then upon the request of the part _____ of the first part, a good and sufficient deed of release shall be executed to _____, at _____ own proper costs and charges.

WITNESS the following signature and seal :

[Signatures and seals.]

[Acknowledgment.]

WASHINGTON.

Mortgages of land may be in the following form, substantially:

1417. Mortgage, Statutory Form.

The mortgagor [*here insert name or names*] mortgages to [*here insert name or names of mortgagee or mortgagees*] to secure the payment of [*here recite the nature and amount of indebtedness, showing when due, rate of interest, and whether secured by note or not*], the following described real estate [*here insert description*], situated in the county of _____, state of Washington.

Dated this _____ day of _____ 19 _____.

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. Remington & Ballinger's Annotated Codes and Statutes of 1909, § 8750.

1418. Mortgage — Coupon Note.

THIS INDENTURE, made this _____ day of _____, A. D. 19 _____, between _____, the part _____ of the first part, and _____, part _____ of the second part,

WITNESSETH, that the said part _____ of the first part for and in consideration of the sum of _____ dollars, gold coin of the United States of America, to

in hand paid by the said part of the second part, do by these presents grant, sell, convey and confirm unto the said part of the second part, heirs, executors, administrators and assigns, the following described real estate, situate in the county of _____, state of Washington, to wit: [description] With all and singular the hereditaments and appurtenances to the same belonging or appertaining, the reversion or reversions, remainder or remainders, hereby expressly waiving and relinquishing all right and claim of homestead and benefit of exemption, appraisement and stay laws of the state of Washington with reference to said premises and any other premises that may be levied upon to satisfy the debt hereby secured or any part thereof.

The above granted premises unto the said part of the second part, heirs, executors, administrators and assigns forever, with all the privileges and appurtenances thereto belonging.

And the said part of the first part do covenant for and _____ heirs, executors, administrators and assigns to and with the said part of the second part, _____ heirs, executors, administrators and assigns as follows:

1st. That the said part of the first part _____ seized of the said premises in fee simple, and ha good right to convey the same. 2nd. That the said part of the second part shall quietly enjoy the said premises. 3rd. That the said premises are free from all incumbrances. 4th. That the said part of the first part will execute or procure any further necessary assurance of the title to said premises to the effect intended hereby. 5th. That said part of the first part will warrant and defend the title to the same forever against all lawful claims and demands whatsoever.

THIS INSTRUMENT IS A MORTGAGE given to secure the performance of the following agreements, to wit:

I. The said part of the first part _____ justly indebted to the said part of the second part in the principal sum of _____ dollars (\$ _____), payable on the _____ day of _____, A. D. 19 _____, with interest from date to maturity at the rate of _____ per cent. per annum, and after maturity at the rate of twelve per cent. per annum, payable _____ annually, both principal and interest payable in gold coin of the United States of America at _____, with exchange on _____, all according to the terms of one first mortgage promissory note with _____ interest coupon notes thereto attached, which notes executed and delivered herewith and of even date with this mortgage _____ hereby agree to pay, consenting to the entry of a deficiency judgment for whatever balance of the judgment debt and costs may remain unsatisfied after the foreclosure sale, if any be made, of the above described property.

II. Said part of the first part hereby agree to procure and maintain insurance on the buildings erected and which may be erected upon the above described premises in some responsible fire insurance company to the satisfaction of the said part of the second part to the amount of at least _____ dollars with loss, if any, payable to the part of the second part, or heirs or assigns. And it is further agreed that every such policy of insurance shall be held by the part of the second part as collateral or additional security for the payment of the debt hereby secured, and the person or persons so holding any such policy of insurance shall have the right to collect and receive any and all moneys which may at any time become payable and re-

ceivable thereon, and apply the same when received to the payment of said debt, together with the costs and expenses incurred in collecting said insurance, or may elect to have buildings repaired or new buildings erected on the aforesaid mortgaged premises; or said part of the second part may deliver said policy to said part of the first part and require the collection of the same and payment made of the proceeds as last above mentioned.

III. Said part of the first part hereby agree to keep the buildings, fences and other improvements upon said premises in as good repair and condition as the same are at this date, or may be put into during the continuance of the lien hereof, and not to commit or permit waste on said premises until the debt hereby secured is fully paid.

IV. Said part of the first part hereby agree to pay and extinguish all taxes or assessments and other public charges that may be levied or assessed upon said premises, or upon this mortgage, or the note hereby secured, at least fifteen days before the same would become delinquent, and all prior liens, claims, adverse titles and incumbrances on said premises, so that this mortgage shall be a first lien thereon until all sums hereby secured are fully paid; and if the foregoing agreements are not performed as aforesaid, then the said part of the second part may elect to pay and extinguish such taxes, assessments, insurance premiums, liens, claims, adverse titles and incumbrances, and cause said repairs to be made, and the amount so paid with interest thereon at the rate of twelve per cent. per annum from the date of any advancement until the same is wholly repaid shall be a lien on the premises aforesaid and be secured by this mortgage and collected in the same manner as the principal debt hereby secured, but upon any default said part of the second part may immediately cause this mortgage to be foreclosed, whether elect to pay any of the sums above referred to or not.

V. Said part of the first part hereby agree that in case of failure to pay or cause to be paid any part of the sums hereby secured, either principal or interest, according to the terms, tenor and effect of said principal or interest notes when the same become due, respectively, or to conform to or comply with any of the foregoing conditions or agreements, the whole sum of money hereby secured shall at the option of the said part of the second part become due and payable at once without notice, it being agreed that time is material and of the essence hereof, and said mortgage may be foreclosed, whereupon in addition to the sum found due at the time of such foreclosure, said part of the first part shall be entitled to recover as attorney's fees in said suit the sum of dollars in addition to the costs and disbursements of such suit, and the said attorney's fee shall be paid by said part of the first part if suit be settled before judgment.

VI. Said part of the first part hereby agree that in default of the payment of any sum hereby secured when the same is due, or in default of the specific performance of any agreements herein contained, said part of the second part shall be entitled to have and recover of and from the maker of said note hereby secured interest at the rate of twelve per cent. per annum computed annually on said principal note from the date of such default to the time when the same shall be actually paid in full. And it is further agreed that in case of any default in any respect so that this mortgage

may be foreclosed, all the rents, revenues and profits of said premises during the existence of this mortgage and until the payment of the debt secured hereby, or until the expiration of the time for redemption after foreclosure sale or execution are hereby mortgaged and pledged to the payment of the indebtedness secured hereby, and that upon any default on the part of said part of the first part of any of the terms, conditions or provisions of this mortgage, it is agreed and shall be conclusively presumed, that said rents, revenues and profits are in danger of being lost, removed or materially injured, and that the said premises are insufficient to discharge the debt secured hereby. And that upon filing the complaint to foreclose this mortgage, the court or the judge thereof, where said complaint may be filed shall, upon presentation of said complaint and without notice appoint a receiver with usual powers, to take immediate possession of all the property described in this mortgage and to demand, receive and recover all rents, revenues and profits of said property; that said receivership shall continue until the payment of the debt, or until the expiration of the time of redemption and execution of sheriff's deed under execution sale, and the receiver shall, under the order and direction of the court, pay the taxes, insurance and repairs on said property, and the balance to the plaintiff in the action to apply on the mortgage indebtedness, and to such other uses and purposes as the court may direct.

VII. All the provisions and agreements contained in this mortgage shall apply to and be binding upon the respective heirs, executors, administrators and assigns of the parties hereto.

VIII. All sums secured hereby are payable in gold coin of the United States of America.

IX. PROVIDED, HOWEVER, all the foregoing covenants, agreements and stipulations being performed this mortgage shall be void and be released by said part of the second part at the proper cost of said part of the first part.

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

[Signatures and seals.]

Signed and sealed in the presence of

[Signatures.]

1419. Coupon Note.

COUPON NOTE.

| | | | |
|----------------------------|---|-----------|---|
| No. | . | \$ | . |
| SECURED BY FIRST MORTGAGE. | | PER CENT. | |

WASHINGTON, , 19 .

On the day of , A. D. 19 , after date, for value received, promise to pay to the order of , at , the principal sum of dollars, with interest thereon from date to maturity at the rate of per cent. per annum, payable annually, according to the tenor of coupon notes, of even date herewith, and hereto attached, numbered from one to , inclusive; with interest after maturity at the rate of twelve per cent. per annum, both principal and interest payable in gold coin of the United States at the present standard of weight and fineness, with New York exchange.

IT IS EXPRESSLY AGREED, that if default be made in the payment of any

interest coupon note, or any portion thereof, after the same becomes due and payable at the time and place aforesaid, then the said principal sum and all accrued interest shall, at the option of the legal holder or holders hereof, thereupon and without further notice become due and payable. It is further agreed that if suit be brought to collect said principal and interest will pay the additional sum of _____ per cent. on the amount due, as attorney's fees in said suit.

This note is secured by a first mortgage upon real estate in the state of Washington. If said mortgage is foreclosed it is agreed that no deficiency judgment shall be taken.

[Signatures.]

[Append coupons as follows:]

\$..... WASHINGTON,.....19.....
 On the.....day of.....19...., for value received
promise to pay to the order of.....
 at.....
 the sum of.....Dollars
 in gold coin, with New York exchange, for interest due on the
 principal note of \$..... This coupon note bears interest
 at the rate of 12 per cent. per annum after due.
 Note No.....
 Coupon No.....

Pay to the order of _____, without recourse.

[Signatures.]

WEST VIRGINIA.

1420. Trust Deed.

THIS DEED, made the _____ day of _____, in the year 19____, between _____, grantor, of the one part, and _____, grantee and trustee, of the other part, the said grantor of _____ county, and the said grantee of _____ county, West Virginia, WITNESSETH, that the said _____, the grantor as aforesaid, do hereby grant unto the said _____, grantee and trustee as aforesaid, with covenants of general warranty, the following real and personal property, lying and being situate in _____ county, West Virginia, to wit: [description] in trust, to secure [describe terms of loan].

WITNESS the following signature and seal.

[Signatures and seals.]

WISCONSIN.

A mortgage may be substantially in the following form:

1421. Mortgage, Statutory Form.

A. B., mortgagor, of _____ county, Wisconsin, hereby mortgages to C. D., mortgagee, of _____ county, Wisconsin, for the sum of _____ dollars, the following tract of land in _____ county [here describe the premises].

Wisconsin, and known and described as [description] together with all the privileges and appurtenances to the same belonging.

To HAVE AND TO HOLD the same to the said part of the second part, heirs and assigns forever. And the said , part of the first part, hereby covenant that well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and ha good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that will forever warrant and defend the same to the part of the second part, heirs and assigns, against all claims whatsoever.

PROVIDED, ALWAYS, and these presents are upon this express condition, that if the said part of the first part, heirs, executors and administrators, shall pay or cause to be paid to the said part of the second part, heirs, executors, administrators or assigns, the just and full sum of according to the conditions of bearing even date herewith, executed by the said of the first part, to the said part of the second part, and shall moreover pay annually to the proper officers, all taxes which shall be assessed on the said real estate, and to deliver duplicate receipts therefor to said part of the second part, heirs or assigns, on or before the first day of May next after such taxes shall have become due and payable, and to insure and keep insured the buildings thereon against loss or damage by fire in the sum of dollars, or over, in insurance companies to be selected by the said part of the second part, heirs or assigns, and the policy or policies of such insurance assigned as collateral hereto, and in default thereof it shall be lawful for the said part of the second part, heirs or assigns, to effect such insurance, and the premium and premiums and other legal expenses, fees, costs and charges paid for effecting the same, together with interest thereon at the rate of ten per cent. per annum, shall be a lien upon the said mortgaged premises, added to the amount of the said , and secured by these presents until the payment of said , then these presents shall be null and void. But in case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or to insure and keep the policies assigned agreeably to the conditions of these presents, or of the aforesaid or any part thereof, or in case of failure to deliver such receipts as above provided, or in case of the failure on the part of said part of the first part to keep or perform any other agreement, stipulation or condition herein contained, then in such case the whole amount of the said principal sum shall, at the option of the said part of the second part, representatives or assigns, be deemed to have become due, and the same, with interest thereon at the rate aforesaid, shall thereupon be collectible in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid; and it shall be lawful in such case for said part of the second part, heirs, executors, administrators or assigns, to grant, sell and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue; and on such sale to make and execute to the purchaser or purchasers,

his, her or their assigns forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said _____, together with the costs and charges, rendering the surplus moneys, if any there be, to the said part of the first part, _____ heirs, executors or administrators, after deducting the costs of such vendue as aforesaid; and in case of the foreclosure of this mortgage, the said part of the first part, for _____ representatives or assigns, do covenant and agree that _____ will pay to the said part of the second part, _____ representatives or assigns, in addition to the taxable costs in the foreclosure suit, _____ as solicitor's fees.

IN WITNESS WHEREOF, the said part of the first part ha _____ hereunto set
hand and seal this _____ day of _____, A. D. 19 _____.

[Signatures and seals.]

Signed, sealed and delivered in presence of

[Signatures.]

WYOMING.

Mortgages of lands may be substantially in the following form:

1424. Mortgage Deed, Statutory Form.

A. B., mortgagor, [*here insert the name or names and place of residence of the mortgagor or mortgagors*] to secure the payment of [*here insert the amount of the mortgage indebtedness, when due, the rate of interest, and whether or not a note has been given therefor*], do hereby mortgage to C. D., mortgagee, [*here insert the name and place of residence of the mortgagee*] the following described real estate situate in the county of [*here insert the name of the county in which the lands mortgaged are situated*] state of Wyoming, to wit: [*here insert a description of the property mortgaged*].

The mortgagor agrees to pay all taxes and assessments on said premises and to keep the buildings thereon insured in a sum not less than [*here insert the amount of the insurance to be carried*] during the life of this mortgage, in favor of and payable to the mortgagee; and in case the mortgagor shall fail to pay such taxes and assessments, and to keep said premises insured as aforesaid, the mortgagee may insure said buildings and pay said taxes and assessments, and all sums so paid shall be added to and considered as a part of the above indebtedness hereby secured, and shall draw interest at the same rate.

In case default shall be made in the payment of the above sum hereby secured, or in the payment of the interest thereon, or any part of such principal or interest, when the same shall become due, or in case default shall be made in any of the covenants and agreements hereof, then the whole indebtedness hereby secured, with the interest thereon, shall become due and payable, and the mortgagee may proceed, pursuant to law, to foreclose on and sell said property, and out of the proceeds of such sale he shall pay all sums due hereunder together with all costs of sale and foreclosure, including _____ dollars as attorney's fees. (And where the right of homestead is re-

leased, add the following:) Hereby relinquishing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this day of A. D. , .
In presence of

A. B.

Revised Statutes of 1899, § 2774.

Every mortgage of lands in substance in the form prescribed in the preceding section, when otherwise duly executed, shall be deemed and held a good and sufficient mortgage in fee to secure the payment of the moneys therein specified; and if the same shall contain after the word "mortgage," where it first appears in said form, the words "and warrants," such mortgage shall be construed the same, to all intents and purposes, as if full covenants of seizin, good right to convey, against incumbrances, quiet enjoyment and general warranty, as expressed in sections 2766 and 2767 of this title, were fully written therein; but if the words "and warrants" are omitted no such covenants shall be implied. *Ibid.*, § 2775.

A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect:

1425. Deed of Trust, Statutory Form.

This deed, made the day of , in the year of , between (the grantor) of the one part, and (the trustee) of the other part; WITNESSETH: that the said (the grantor) doth (*or, do*) grant unto the said (the trustee) the following property [*here describe it*], in trust to secure [*here describe the debts to be secured or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon*]; WITNESS the following signature and seals (*or, signature and seal*).

Ibid., § 2796.

A cancellation or discharge of mortgage or deed of trust may be in the following form, substantially:

1426. Certificate of Discharge, Statutory Form.

This certifies that a (mortgage or deed of trust, as the case may be) from to dated A. D. , and recorded in book of on page has been fully satisfied by the payment of the debt secured thereby, and is hereby cancelled and discharged.

Signed in the presence of ,
county clerk of county.

Filed and recorded A. D. at M.
County Clerk.

Such cancellation or discharge shall be entered in a book kept for that purpose and signed by the mortgagee or trustee, his attorney in fact, executor, administrator or assigns, in the presence of the county clerk, or his deputy, who shall subscribe the same as a witness, and such cancellation or discharge shall have the same effect as a deed of release duly acknowledged and recorded. *Ibid.*, § 2777.

CHAPTER XLII.

NATURALIZATION.

An alien applying for naturalization must, with the exceptions stated below, be a free white person, or of African nativity or descent, who has resided in the United States for the continued term of five years next preceding his admission, and within the state, territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition. Two years at least before his admission and after he has reached the age of eighteen years, he must declare on oath or affirmation, before the clerk of any court authorized by Act of Congress of June 29, 1906, ch. 3592, 34 St. L. 596; to naturalize aliens, or his authorized deputy, in the district in which such alien resides, that it is bona fide his intention to become a citizen, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name the prince, potentate, state, or sovereignty of which he is at the time a citizen or subject.

By section 3 of the said Act of Congress of June 29, 1906, ch. 3592, exclusive jurisdiction to naturalize aliens as citizens of the United States is conferred upon United States circuit and district courts then existing, or thereafter established by Congress in any state, United States district courts for the territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any state or territory then existing, or thereafter created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The naturalization jurisdiction of all said courts, state, territorial, and Federal, extends only to aliens resident within the respective judicial districts of such courts.

The declaration of intention shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: Provided, however, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration. Act of June 29, 1906, ch. 3592, § 4.

The Bureau of Immigration and Naturalization in the Department of Commerce and Labor, under the direction and control of the Secretary of Commerce and Labor, has charge of all matters concerning the naturalization of aliens. *Ibid.*, § 1.

Not less than two years nor more than seven years after the alien has made the declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, stating his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: and setting forth that he is not a disbeliever in or opposed to organized

government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the state, territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified in their opinion, to be admitted as a citizen of the United States.

If the applicant has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrived after the passage of this Act, stating the date, place and manner of his arrival in the United States, and the declaration of intention of the petitioner, which certificate and declaration shall be attached to and made a part of said petition.

He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state or sovereignty of which he was before a citizen or subject; that he will support and defend the constitution and the laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

It shall be made to appear to the satisfaction of the court, admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

In case the alien applying has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall make an express renunciation of his title or order of nobility in the court, and his renunciation shall be recorded in the court.

When an alien who has declared his intention to become a citizen dies before he is actually naturalized the widow and minor children may, by com-

plying with the other provisions of this Act, be naturalized without making any declaration of intention. *Ibid.*, § 4.

The clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses he expects to summon; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned. *Ibid.*, § 5.

Petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition; but no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. At the time and as a part of the naturalization of an alien, the court may, upon the petition of the alien, make a decree changing the name of the alien, and his certificate of naturalization shall be issued to him in accordance therewith. *Ibid.*, § 6.

No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief or opposition, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States. *Ibid.*, § 7.

No alien shall be naturalized or admitted as a citizen who cannot speak the English language; but this requirement shall not apply to aliens physically unable to comply therewith, if they are otherwise qualified to become citizens, nor to any alien who prior to the passage of this Act declared his intention to become a citizen in conformity with the law in force at the time of making such declaration, nor to aliens who declare their intention to become citizens and who make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands. *Ibid.*, § 8.

Every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing the applicant and witnesses shall be examined under oath before the court and in the presence of the court. *Ibid.*, § 9.

In case the petitioner has not resided in the state, territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law, to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside. *Ibid.*, § 10.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of the certificate, return to the country of his nativity, or go to any other foreign country,

and take permanent residence therein, it shall be prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent. *Ibid.*, § 15.

All the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons and citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law. *Ibid.*, § 30.

By statute, it is provided that an alien who has been honorably discharged from the military service of the United States may be naturalized on proof of one year's residence. U. S. Rev. St., § 2166.

The children of naturalized persons, under the age of twenty-one years at the time of the naturalization of their parents, are citizens, if dwelling in the United States. *Ibid.*, § 2172.

A seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and has served three years on a United States merchant vessel subsequent to the date of such declaration, may be admitted a citizen on production of his certificate of discharge and good conduct and the certificate of his declaration of intention. *Ibid.*, § 2174.

CHAPTER XLIII.

NOTARIES.

NOTARIES, or notaries public, as they are often called, are appointed by the executive authority of the state or kingdom where they are to act. Their functions are chiefly to attest affidavits, deeds, and other instruments, to protest bills and notes, and to certify copies of instruments. The courts and the customs of merchants, in all nations, respect their acts; but usually in this country the powers of our notaries are to some extent defined in the statutes of the state. In the state of New York, the governor may appoint by and with the consent of the senate such number of notaries in and for the several counties as may be necessary. Executive Law, §§ 101-105. Birdseye, C. & G. Cons. Laws, pp. 1661-1665. In several states the common councils or corresponding political bodies of the cities may appoint commissioners of deeds, whose powers are similar to those of notaries except in regard to protests of commercial papers. It is also customary for the governor of the state to appoint citizens of other states and countries, there resident, commissioners of deeds, for the purpose of taking acknowledgments and certifying to official acts and deeds in the states and countries for which they are appointed and where they reside. The chapters on AFFIDAVITS; ACKNOWLEDGMENTS OF DEEDS, and PROTESTS, present the chief instruments used or attested by notaries.

CHAPTER XLIV.

NOTICES.

WHENEVER magistrates, referees, or arbitrators proceed judicially to inquire into and determine a question of rights, the party affected is entitled to notice of the hearing and an opportunity to be heard.

Whenever the right of a party under a contract depends upon a contingency, the happening of which is peculiarly within his own knowledge, he should give notice of its happening to the other party.

All notices which form part of a legal proceeding should be in writing; but in other cases, notices need not be in writing or in any particular form, unless this is required by the statute or contract which raises the necessity of giving notice.

Where notice is required to be given a certain number of days before an act, either the day of giving the notice or that of doing the act may be counted, but not both. The law disregards the fraction of the day. But if the period be so short that this rule would work injustice, it would not be applied. Thus a notice given on Saturday night, for an act to be done Monday morning, might be held not a sufficient two days' notice.

Notices appropriate to the various proceedings treated in this work will be found in their appropriate connection in other chapters.

CHAPTER XLV.

OATHS.

AN oath is a declaration made according to law before a competent tribunal or officer, invoking God to witness the truth of what is said. It may be taken in various ways, according to the religious belief of the deponent. The most usual forms are given. When the oath is intended to be taken upon the Evangelists, its validity is not affected by a mistake in using another book instead.

Oaths to support the constitution and execute and obey the laws are required from public officers, and oaths of fidelity are required from persons judicially selected for the performance of duties and trusts of various kinds, and the forms are usually prescribed by statute.

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1424. Oath Taken Upon the Evangelists.

[The officer extends the book to the deponent, who takes hold of it, and the officer says:] "You do solemnly swear, that [here state the object of the

oath — e. g., thus:] the matters stated in this affidavit subscribed by you are true. So help you God.” [*Here deponent will raise the book to the lips.*]

1425. Oath Taken by Uplifting the Hand.

[*The deponent raises his right hand, and the officer says:*] “You do swear, in the presence of the Ever-living God, that the matter stated in this affidavit subscribed by you are true.” [*And the deponent responds:*] I do.

1426. Affirmation.

[*The officer says:*] “You do solemnly, sincerely, and truly declare and affirm, that” [*etc., as in preceding form.*]

1427. Oath or Affirmation of Witness.

[*Insert in preceding forms*] that you will true answers make to the questions that shall be put to you touching [*here state the matter — e. g., thus:*] the execution of the deed herewith shown you.

1428. Another Form for Use in an Action.

[*Insert in preceding forms*] that the evidence you shall give in relation to the matter of difference now here pending between A. B. and Y. Z., shall be the truth, the whole truth, and nothing but the truth.

1429. General Form of Oath of Office.¹

COUNTY OF _____, ss.

I, A. B., do solemnly swear [*or affirm*], that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability. [*In New York state, officers who shall have been chosen at any election, must, in addition to the foregoing oath or affirmation, subscribe also to the following:*]

And I do solemnly swear [*or affirm*] that I have not, directly or indirectly, paid over, or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing, as a consideration or reward, for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding of any such vote.

Subscribed and sworn before me,

[*Signature.*]

this _____ day of _____,

[*Signature of officer.*]

¹ See Constitution of New York, art. 13, § 1; Birdseye, C. & G. Cons. Laws, 1909, p. 170.

CHAPTER XLVI.

PARTNERSHIP.

PARTNERSHIP is the relation between two or more persons who are engaged in a joint adventure or undertaking, and are to participate in the profits or loss which may result from it.

Joint ownership of property does not necessarily make men partners. They must have joined in some adventure or undertaking with or in respect to the property, upon an agreement or under circumstances from which the law will imply an agreement to share profit or loss or an agency between them.

Resorting to a division of profits, as a measure of compensation, does not necessarily make men partners.

One who is employed in the business of a firm, in a subordinate capacity, having no interest in the capital nor sharing liability for losses, is not rendered a partner, by the fact that he is to receive a portion of the profits in compensation for his services. To constitute partnership there must be an ownership in profits as they arise; a right to them as the product of capital and labor employed in an adventure in which both parties are interested, and not as a measure of compensation only.

There is no necessity for any agreement in writing or for any express agreement whatever, as to terms of co-operation, in order to constitute partnership. When persons unite in employing property in an adventure for profit, without any agreement to regulate their interests, the law prescribes a code of rules which may be briefly stated as follows: They are recognized as partners. Whatever name they use in doing business is the firm name, even though it happens to be the individual name of a partner. Each is entitled to an equal share of profits and bound to an equal share of losses, whatever difference there may be in value or amount of services rendered or capital contributed. Each partner can represent the whole, within the scope of the partnership business, and as toward innocent third persons, can bind all his associates by his dealings and simple contracts, which do not appear to exceed the bounds of that business. Any one of the partners may, at any time, terminate or dissolve the partnership; and if not satisfied with the share in the final division, which his partners are willing to accord him, he may apply to a court of justice to appoint a person, who shall take the assets, convert them into money, and, after paying the law expenses and the firm debts, divide the residue of the proceeds among the associates, in the proportion of their contributions to the capital, and under the direction of the court. Persons who are willing to abide the blind application of these rules, to their adventure, have no need to enter into written articles. But great advantage is found in written articles, and careful and equitable provisions restricting the partners, defining their several duties and their shares of compensation, and providing a mode of final settlement.

For the special provisions in New York, see **PARTNERSHIP LAW** (Birdseye, C. & G. Cons. Laws, 1909, pp. 3730-3745).

While a partnership exists, however it may have been formed, the several partners have very broad and general powers to act for each other within the scope of the business. Either one of them can deal with the partnership property as if he were the owner; can bind the firm as toward innocent holders, by signing its name to notes, and other simple contracts not appearing to be in excess of his authority, and can contract debts in its name. Each partner is also personally liable for all the partnership indebtedness. But these powers of a partner do not extend to executing a sealed instrument, or confessing a judgment; nor to the making of a general assignment of the assets of the firm for the benefit of creditors, with preferences.

Dissolution of partnership may take place in various ways besides those provided by the articles; as by the death of a partner; by his insanity, or

other absolute incapacity; by his assignment of his interest to a stranger, etc., etc.

Immediately after a dissolution of copartnership, a notice should be published in the public papers to that effect, for the information of the public at large, and a special notice should be sent to every correspondent, and every other person who has had any dealings with the company. If these precautions are omitted, one partner will still be liable for the acts of the other, to all persons not having had notice, as before the dissolution.

When the partnership has been once dissolved, no individual member of the firm can do any act by which he can increase or continue the liability of the other members of the partnership. He cannot give a partnership note, or sign any partnership agreement, or do any act to renew any claim against the firm, or to take it out of the effect of the Statute of Limitations.

Besides the ordinary or "general" partnerships, to which the foregoing rules apply, the statutes of most of the states now authorize the formation of "*Limited*" partnership. The peculiar feature of this is, that one or more partners are permitted to put a certain stipulated capital at hazard, in the adventure; and are not liable for any losses (provided they have, in all respects, complied with the statute) beyond that amount.

Such partnership consists of one or more persons, called general partners, and also one or more persons, called special partners.

In order to form a limited partnership in New York, a certificate must be made and signed by the parties. An affidavit of one or more of the general partners must also be made, stating that the sums specified in the certificate, as having been contributed by the special partners, have been actually and in good faith paid in in cash. The certificate must be acknowledged and filed, with the affidavit, in the office of the clerk of the county in which the business is to be carried on; and, if such business is to be conducted in more than one county, transcripts of the certificate and acknowledgment must be filed in such other counties. Immediately after the filing of the certificate, a copy of the same or a notice containing the substance thereof, shall be published once in each week for six successive weeks in two newspapers of the county in which such original notice is filed, to be designated by the county clerk, one of which newspapers shall be published in the city or town in which the principal place of business is located, if there is such a paper; otherwise in the newspaper published nearest thereto; and proof of such publication by affidavit of the printer or publisher of each of said newspapers shall be filed with the original certificate.

In publishing the terms of a limited partnership, they must be in all respects truly stated, in each newspaper, or the special partners will become liable as general partners.

The general partners only may transact the business of a limited partnership. A special partner may examine into the state of the partnership concerns, and advise as to their management; but his name cannot be used in the transactions of the firm; nor can he interfere in the management thereof, either as agent, attorney, or otherwise, without rendering himself liable as a general partner, except to the limited extent authorized by statute. The business is to be conducted under a firm name, in which the names of the general partners only can be inserted, without the addition of the word "company" or and other general term.¹

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¹ Partnership Law, §§ 30-42, Birdseye, C. & G. Cons. Laws, 1909, pp. 3734-3744.

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I. GENERAL PARTNERSHIP.

1430. Articles of Copartnership in Commercial Business.

ARTICLES OF AGREEMENT, made the day of , one thousand nine hundred and , between A. B., of , and Y. Z., of , WITNESSETH, as follows:

I. The said parties above named have agreed to become copartners in business, and by these presents do agree to be copartners together under and by the name or firm of B. & Z., in the business of [*here designate it briefly, but accurately*],¹ in the [buying and] selling all sorts of goods, wares, and merchandise to the said business belonging. [*If the location of the place of business is deemed essential, it may be here specified.*] The partnership to commence on the day of , and to continue years.

II. To that end and purpose the said A. B. has contributed the sum of dollars in cash, and the said Y. Z. has contributed the lease of the store in , to be occupied by them, and the stock of goods and good-will of the business there heretofore carried on by him, which are together estimated and valued by the parties at the like sum of dollars, the capital stock so formed to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage.

¹ The scope of the business should be distinctly defined, if it is desired to preclude individual partners from involving the firm in liability by dealings beyond the intended scope. Thus if only a commission business is intended, the word "buying" should be omitted.

III. At all times during the continuance of their copartnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit, and advantage, and truly employ (buy), sell, and merchandise with their joint stock, and the increase thereof, in the business aforesaid. And also, that they shall and will at all times during the said copartnership, bear, pay, and discharge equally between them, all rents and other expenses that may be required for the support and management of the said business; and that all gains, profit, and increase that shall come, grow, or arise from or by means of their said business, shall be divided between them equally [*or state other proportion*]; and all loss that shall happen to their said joint business by ill commodities, bad debts, or otherwise, shall be borne and paid between them equally [*or other proportion*].

IV. And it is agreed by and between the said parties, that there shall be had and kept at all times during the continuance of their copartnership, perfect, just, and true books of account, wherein each of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods, wares, commodities, and merchandise by them or either of them bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and the management thereof in any-wise belonging; which said book shall be used in common between the said copartners, so that either of them may have access thereto, without interruption or hindrance of the other. And also, the said copartners, once in [*designating the times*], or oftener, if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and account of all profits and increase by them or either of them made, and of all losses by them or either of them sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done, or suffered in this said copartnership and business; and the same account so made, shall and will clear, adjust, pay, and deliver, each to the other, at the time, their just share of the profits, and pay and bear their just share of the expenses and losses so made as aforesaid.

V. And the said parties hereby mutually covenant and agree, to and with each other, that during the continuance of the said copartnership neither of them shall nor will indorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end or other sooner determination of their copartnership, the said copartners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks; as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them.

[*Here add any other special stipulations which may be desired.*]

IN WITNESS WHEREOF, the parties hereto have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in the presence of [*Signatures and seals.*]

[*Signature of witness.*]

1431 Articles of Copartnership in Manufacturing Business.¹

AGREEMENT OF COPARTNERSHIP, entered into the day of , by and between L. M., of the city of , state of , party of the one part, and W. B., of the city of , state of , of the other part.

First. The said parties agree to become copartners under the firm name of M. & B., in the business of manufacturing and selling . Their place of business to be located in said .

Second. All moneys required to pay necessary and actual expenses of the respective partners in negotiating and making sales shall be supplied by the partners respectively, and shall be repaid to the partner advancing them, out of the gross sum received from sales, before any division of profits; but in no event shall be demandable either wholly or in part from his copartner.

Third. The said W. B. binds himself to promptly secure all moneys which may be required from time to time for the purpose of making advances to builders of machinery on orders of said firm, and for carrying to completion contracts for such machinery; and any failure on the part of said W. B. to secure said moneys as aforesaid shall have the effect of terminating this agreement at the option of said L. M.

Fourth. Neither of the partners shall be bound to devote his whole time to the business of the firm.

Fifth. Neither of the partners shall be paid anything in the nature of wages or salary for time devoted to the firm's business.

Sixth. Neither of the partners shall become bound as surety or bail for any person or persons, nor become the maker, drawer, indorser, or acceptor of, or on any accommodation note, draft, or other negotiable instrument, unless the consent thereto of his copartner shall have been first obtained in writing.

Seventh. All checks to bind the firm shall be drawn by said W. B. and signed by him in the firm name.

Eighth. Books of account shall be kept by said W. B., and shall be accessible to both partners at all times.

Ninth. The books shall be balanced on the first of , in each year, and the profits, if any, divided equally between said partners.

Tenth. The partnership shall continue for years, unless sooner terminated under the above provisions hereof, or by the death of either of the partners.

WITNESS the hands and seals of said parties, the day and year first above written.

In presence of

[SEAL.]

[SEAL.]

1432. Articles of Copartnership in Hotel Business.

THIS AGREEMENT, made the day of , between A. B., of the city of , of the first part, and Y. Z., of the same place, party of the second part, WITNESSETH: That the said parties to this agreement hereby form with each other a copartnership, and agree with each other to be copartners, for the purpose of purchasing the lease, furniture, good-will, and fixtures of the Hotel, in the city of , situated in street, in the city of , and for the purpose of carrying on and conducting the business of keeping said hotel.

The firm and partnership name under which the business of said partner-

¹ See also Forms 1449 and 1450.

ship shall be conducted and carried on shall be B. & Co.; and the said partnership shall begin on the day of the date hereof, and continue till the expiration of the term for which M. N. has a lease of said hotel, and also till the expiration of any term or time for which the parties to these presents, or either of them, may hereafter obtain a lease of said hotel from the owners thereof during said present lease.

And the said parties to this agreement mutually agree with each other, that they will purchase the interest of M. N. in the lease of said hotel, and in the furniture and fixtures and good-will thereof, at the best price and on the best terms at which the same may be obtained; and that each of the parties thereto shall contribute equally the capital, or capital and securities, necessary to purchase said interest of said M. N. in said hotel and furniture, and to carry on said business.

And the said parties to this agreement further agree with each other, that each shall devote his whole time, attention, talents, and business capacity to the business hereby agreed to be carried on by them, as copartners as aforesaid.

[Covenants as to accounts, restrictions on individual engagements, etc., as in Form 1430; and other stipulations as may be agreed; see Forms 1433 to 1445.]

1433. Articles of Copartnership Between Lawyers.

A. B., C. D., E. F., and G. H. hereby form a partnership as attorneys and counselors under the name of B. & D., to continue for three years from this date; but either party may retire on one month's notice in writing.

Mr. B. shall receive one-half, Mr. D. and Mr. F., each one-fifth, and Mr. H., one-tenth of all the business receipts, including counsel fees from all sources, and deducting expenses.

Each party shall devote all his working time to the business of the firm.

All receipts shall be deposited in a bank to be selected by the firm, in the name of the firm; and after current expenses are paid, shall be divided whenever there is a sum on hand exceeding two hundred dollars.

All checks shall be drawn by Mr. F.

Neither member of the firm shall become indorser or security in any manner for any other person without the consent of all the other members of the firm.

[Signatures.]

Dated New York, , .

1434. The Same; Adapted to a Case Where One Intends to Retire in Favor of the Other.

ARTICLES OF AGREEMENT, made this day of , , between A. B. and Y. Z., both of , attorneys and counselors:

WHEREAS, A. B. is desirous to be relieved of the active management and business of his law practice, and to retire therefrom, and Y. Z. is disposed to undertake the same with the view of succeeding A. B. therein:

It is agreed as follows:

I. The parties hereto hereby enter into partnership for the general practice of law, in the city [or, town] of .

II. A. B. places his office at No. , street, in said city [or, town], and the furniture and fixtures therein, and the lease thereof, with all privileges and expectation of renewals, at the service of said partnership, but

subject to all the covenants in said lease contained, during the continuance of this partnership. He further agrees to give the benefit and aid of his influence, recommendation, and general assistance and advice to promote the business of the partnership; and that he will not be pecuniarily interested in any other law office in said city [or, town], during the continuance thereof, nor for five years thereafter. But it is understood that his time will not be extensively required in the transaction of the ordinary business of the office.

III. Y. Z. agrees to give his whole time and attention to the business of the partnership hereby created.

IV. He further agrees to take the whole general charge, management, and direction of the office of the firm, and of all professional business in which they may be employed, and to superintend and carry forward the same with activity, industry, and professional skill; and to indemnify A. B., and save him harmless of and from all claims and demands arising out of any neglect or mismanagement of any business in which the firm may be employed, excepting any neglect or mismanagement of the said A. B.

V. Y. Z. further agrees to keep just and true books of account of all the business of the firm, which shall be at all reasonable times open to the inspection of A. B.; and that he will on the first day of each calendar month render to said A. B. a statement in writing of all receipts, earnings, costs, counsel fees, profits, or commissions received in or through said business during the month preceding, and that he will at the same time pay to A. B. one-half [or other share agreed on] of the gross amount thereof.

VI. Expenses shall be defrayed as follows: A. B. shall pay one-quarter of the rent, and of the expenses of lighting, heating, and cleaning of office, and of salary of one clerk, as each grows due; and shall have the occupancy of one-quarter in value of the office, the part to be such as he shall select. All other expenses are to be defrayed by Y. Z.

VII. Appearances may be entered in the name of Y. Z., as attorney.

VIII. The partnership hereby formed shall continue in force for year from the date of these articles; but A. B. may at any time withdraw upon giving one month's notice in writing.

IX. Upon any dissolution of the partnership hereby created, except one caused by the death or other incapacity to continue business of Y. Z., an account shall be stated of all sums theretofore earned in and by the professional business of the firm, whether the same be by the usage of the profession immediately chargeable and collectible from the clients of the firm or not; and said sums shall be, from time to time, as opportunity arises, collected by said Y. Z.; and as fast as any of them be collected he shall pay over to A. B., or his representatives, the same share thereof which he would have been bound to pay had they been collected during the partnership. But the general good-will of the business of the firm, and of the lease of any offices then occupied by them, shall inure to the benefit of and belong to Y. Z.

And the said A. B., in consideration of the premises, hereby covenants to and with the said Y. Z., that in case the terms and conditions of this agreement shall be fully performed by the said Y. Z. throughout the term above prescribed, he will not, without the consent in writing of Y. Z., first obtained, carry on the practice of law in said city [or, town], for five years from the expiration of said term, provided the said Y. Z. shall continue to practice law therein.

[Signatures.]

1435. **Articles of Voluntary Association, for Carrying On a Newspaper.**

ARTICLES OF ASSOCIATION made and entered into the day of , in the year one thousand nine hundred and , between A. B. and C. D., of the city of , and E. F., of the city of .

First. The said parties hereby form an association for the purpose of establishing and publishing a daily newspaper in the city of , to be called "The New Courier," and a weekly newspaper from the same office, to be called "The New Weekly Courier," the first number whereof shall be issued on the day of , or as soon thereafter as shall be practicable.

The name of the association shall be A. B. & Co., and the parties above named shall be the sole directors thereof, and shall have the management and direction of its affairs, according to the judgment of the majority, subject to these articles, until further articles in writing shall be made in the premises and signed by all the parties hereto.

Second. The business of the said association shall be conducted without incurring debt, except for salaries, rent, and paper; and no promissory note or other obligation shall be made in the name of the association, or shall be binding on either of said parties, unless he shall have himself signed it.

Third. The said A. B. shall be the editor, and shall have the entire control of the editorial department of both said newspapers; and may, in his discretion, employ such assistants and correspondents in such department as may be necessary, and at such rates of compensation as shall be fixed by the directors. The said A. B. shall give all needful attention to the conduct of said newspaper, and shall be entitled to receive for his services as editor an annual salary of dollars, payable quarterly, which shall be paid as part of the expenses of said newspaper.

Fourth. The financial and mechanical business of the said newspaper shall be managed by said C. D. and E. F., and they shall give all needful attention to the same. They shall have charge of the publication and printing offices, and receive and disburse all moneys, and employ such mechanics and clerks and carriers, and other business agents, as may be necessary, at such rates of compensation as shall be fixed by the directors.

They shall keep full and accurate books of account of the receipts and disbursements, and of all the business of the association, and of the resolutions and orders of the directors; and the same shall be the property of the association, and shall be open at all times to the examination of the directors and each of them.

Fifth. The said C. D. and E. F. shall each contribute in cash the sum of dollars, being dollars in all, as a cash capital to establish and continue said newspapers.

The said newspapers and the good-will thereof, and all the other goods and chattels, rights, credit, and property of said association, as they shall from time to time exist, shall be divided into, and shall always consist of, one hundred equal shares, to be called capital stock, of which said A. B. shall receive, as an equivalent for his editorial ability, shares; and said C. D. and E. F., each shares, as an equivalent for their capital and business ability; and they shall all receive for the same stock, certificates or scrip, signed by all the parties hereto; and all the profits of said paper shall

be divided between said partners in the proportion of the stock aforesaid; and if the said sum of dollars cash shall prove insufficient to establish said newspaper in easy circumstances, then the said A. B., C. D., and E. F. shall, in proportion to their said shares, contribute such additional sum as may, by the resolution of said directors, be determined to be necessary to the purpose; and if any shall fail so to contribute, then those contributing to such additional sums over and above said dollars shall thereafter be entitled to receive an increased share of the profits — that is to say, in proportion to their original shares, with the addition of such additional contributions.

The profits shall be ascertained and divided on the first day of , and in each year, or at such other times as may be fixed by the directors.

Sixth. Each of the parties hereto shall have the right to sell any portion of his shares of said stock; but before selling the same to any other person, he shall offer the same to the association, giving them the refusal thereof for days. But no sale of any such shares shall give to any purchaser thereof any right to interfere in the conduct, management, or affairs of said newspapers, or either of them; and no such purchaser shall acquire any interest whatever in the profits of said papers till he shall have received a certificate or scrip for his said shares, signed by all the parties hereto, and duly registered in a book kept for that purpose; which scrip shall always express from whom the said shares were purchased, and shall certify that the holder of said scrip takes the same with notice of and subject to the articles of association between the parties hereto, and is entitled to participate in proportion to his shares only in that portion of the profits which may be assigned to the party so selling to such purchaser, and shall not be entitled to any voice or agency whatever in the conduct, control, management, or affairs of said company or of said newspapers.

Seventh. These articles may be altered at any time, by agreement in writing, to be signed by all the parties hereto, and not otherwise.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written. [Signatures.]

In presence of

[Signature of witness.]

1436. Limit of Amount to be Drawn Out by Partners.

Each of the parties may draw from the cash of the joint stock, the sum of dollars [quarterly], to his own use, the same to be charged in account, and neither of them shall take any further sum for his own separate use, without the consent of the other in writing; and any such further sum, taken with such consent, shall draw interest at the rate of per cent., and shall be payable, together with the interest due, within days after notice in writing given by the other party.

1437. Another Form.

Neither party shall withdraw from the joint stock, at any time, more than his share of the profits of the business then earned, after payment of expenses and losses, nor shall either party be entitled to interest on his share of the capital; but if, at the expiration of the year, a balance of profits be found due to either partner, he shall be at liberty to withdraw the said bal-

ance, or he may leave it in the business, if the other partner consent thereto, in which case he shall be allowed interest on such balance at the rate of _____ per cent.; and shall give _____ notice in writing of intention to withdraw it, before he shall withdraw it.

1438. Provision for Increase of Capital.

Neither party shall draw out any part of the profits of the concern, without the consent in writing of the other parties, until the capital exceeds the sum of _____ dollars, which sum of _____ dollars shall be set apart during the term of the said copartnership as a joint capital for the purposes of the said concern; but when the capital shall exceed the said sum of _____ dollars, then either party may draw out the whole or any part of his share of the profits over and above that capital.

1439. Provisions as to Departments of Service.

The said Y. Z. shall devote and give all his time and attention to the business of the said firm as a salesman, and generally to the care and superintendence of the store; and the said A. B. shall devote so much of his time as may be requisite in advising, overseeing, and directing the purchase and importation of goods necessary to the said business.

1440. Restriction on the Power of Majority.

No purchase or other contract, involving a liability of more than _____ dollars, nor any importation from abroad shall be made, nor any transaction out of the usual course of the retail business, shall be undertaken by either of the partners, without the previous consent and approval of the other partner.

1441. Provision as to Liquidation by Sale at Auction.

Upon the expiration of the aforesaid term, or on the earlier dissolution of this copartnership, if the parties or their legal representatives cannot agree on the division of the assets and the apportionment of the liabilities, and do not refer the same to arbitration, the whole copartnership effects [except the debts due to the firm], shall be sold by public auction, at which each of the parties shall be at liberty to bid and purchase like other persons, and the proceeds shall be divided, after payment of the debts of the firm, in the proportions aforesaid.

1442. Stipulation to Refer Disputes to Arbitration.¹

If at any time hereafter, and before the accounts between the parties concerning the said partnership shall be finally settled and closed, any dispute or difference shall arise between them, the parties, or any two of them, concerning the true construction of anything in these presents, or any accounts to be stated or settled in pursuance hereof, or the valuation of the assets, or anything relating to the partnership, or the concerns thereof, or out of the acts or omissions of either party to this agreement, then and so often as the same shall happen, all such matters in difference shall be submitted and referred to the award and determination of three arbitrators, to be

¹ This provision is a very useful one, as the _____ to come to a settlement accordingly, although equity of it will generally enable the parties _____ it is not specifically enforceable in the courts.

chosen, one by each of the parties to this agreement, and the third arbitrator shall be chosen by the two chosen by the parties to this agreement, and the decision and award of any two of the three arbitrators [in writing], shall be binding and final between the parties to this agreement, and binding on them, and shall be carried out and performed by them. ¹

1443. Provision for Offer to Buy or Sell.²

On the dissolution of the said copartnership, either party may make, in writing, an offer to the other of the price at which he will buy the interest of the other, or sell to the other his own interest; and such other party shall thereupon, within days, signify his election whether he will buy or sell at the price; and if he fails to do so by notice, in writing, within that time, the party making such offer may, within days, buy or sell at his own election according to his offer.

1444. Provision for Dissolution on Notice.

In case of the violation of any of the foregoing covenants and obligations by either of the parties hereto, the other party may, at his option, dissolve this copartnership by giving his partners written notice of his election so to do, within days after being informed of such violation. After the expiration of the first years of said copartnership, either party may at his election dissolve the partnership, by giving months' previous notice in writing, of his intention so to do.

1445. Provision that After a Dissolution, the Retiring Partner Shall Not Carry On the Trade, or Disclose Secrets.

Upon and after the expiration of said term, or other sooner termination of the partnership, except it be terminated by reason of the violation, default, or death of the other party, the partner retiring shall not at any time, either alone, or jointly with, or as agent for, any person, either directly or indirectly, set up, exercise, or carry on the said trade or business of , within miles from aforesaid; and shall not set up, make, or encourage any opposition to the said trade or business hereafter to be carried on by the other party, or his representatives or assigns, nor do anything to the prejudice thereof; and shall not divulge to any person any of the secrets, accounts, or transactions of, or relating to the said copartnership. And for any violation of this stipulation, the parties bind themselves to each other in the sum of dollars, to be deemed liquidated damages, and in total extinction of this covenant, and not in the nature of a penalty.

1446. New Articles on Continuation of Partnership.

THIS AGREEMENT, made this day of , , between A. B., of , , and C. D., and E. F., all of the city of :

WHEREAS, the said parties have for many years last past been engaged in business as in the city of , under the firm name and style of B. D. & Co.; and,

WHEREAS, the said parties desire to continue in the said business under new articles of copartnership;

¹ For fuller provisions as to choosing umpire, and as to the time within which an award must be made, see the chapter on ARBITRATION, and general index. ² Such a provision as this affords a very convenient mode of liquidating the affairs where the shares are exactly defined.

NOW THIS INDENTURE WITNESSETH: That the said parties for and in consideration of the premises and of the mutual covenants herein contained, and of the sum of one dollar to each in hand paid by the other, the receipt of which is hereby acknowledged, have mutually covenanted and agreed as follows:

First. The said business so heretofore carried on shall be continued in all particulars as in past years, and shall be conducted under the firm name and style of B. D. & Co., and the main office or place of business of said firm shall be in the city of .

Second. The said copartnership shall commence as of the date of the day of , , and shall continue for the term of years from and after said date, except as hereinafter provided.

Third. The moneys which shall be in the said business to the credit of the several partners of the said firm on the day of , , shall remain, except as herein provided, as the capital of the various partners in the said business, and subject to the terms hereof.

Fourth. Regular books of account shall be justly and fully kept of all the business and transactions of the said firm, and each of said partners and their respective legal representatives or agents shall have free access to inspect, examine, and copy out the same. In all other respects the financial business and affairs of the firm shall be conducted in the same manner as heretofore.

On the 30th day of June, , and on the 31st day of each December, and the 30th day of each June thereafter during the continuance of this firm, a full particular account in writing shall be made and taken of all the stock in trade, money, assets, credits, and things belonging to and owing to said firm, and of all such other matters and things as are customarily comprehended in annual accounts, and a just valuation and appraisalment shall be made of all the particulars included in such accounts, which require and are capable of valuation and appraisalment, and the interest of each partner in its capital and effects shall be ascertained, and a balance sheet made out and corresponding entries made in its books of account, so that the true condition of the firm may be then actually known, to the end that the amount of net profits actually and without contingency earned may be from time to time credited on said books of account to the respective partners in the proportions and amounts to which they shall severally be entitled. In arriving at the amounts due upon said balance sheet there shall be charged to the expense account all expenses of the business, together with interest on the capital stock of the several partners in the said firm, as herein provided, and also all losses and other charges incident or necessary to the carrying on of the business.

Fifth. The financial management of said firm shall be in the charge of A. B. and each of the copartners, excepting C. D. shall devote his time and energy exclusively to the business of the firm, and during the continuance of this copartnership shall not be engaged or interested in any other business.

Sixth. After the payment of the interest and charges mentioned in the foregoing fourth article of this agreement the net profits of the business shall be divided between the said partners at and after the rates hereinafter specified, the losses to be borne in the same proportion.

A. B., per cent. thereof.
 C. D., per cent. thereof.
 E. F., per cent. thereof.

Seventh. The said partners shall be entitled to draw from said business in each year on account of profits due to them, respectively, sums of money not exceeding the following sums, said moneys to be drawn in equal monthly installments:

- A. B., dollars.
 C. D., dollars.
 E. F., dollars.

Each of the partners shall in addition to the foregoing sums be entitled to withdraw in any one year a sum or sums not exceeding 10 per cent. of the capital standing to his credit on the books of said copartnership at the beginning of said year.

Eighth. It is further agreed that the death of any of the parties hereto during the continuance of this agreement shall not operate as a dissolution of said copartnership, but the same shall be carried on by the survivors until the time when, by the terms hereof, the said copartnership would thereafter expire, and the capital of the copartnership shall remain unimpaired, and no part thereof, except as hereinbefore provided, shall be withdrawn by the legal representatives of any deceased partner before the expiration of this agreement, as herein provided. But the legal representatives of such deceased partner shall be entitled to all payments and credits which the said partner would have received if then living, but shall have no right of active control or interference in said business, but shall have all the other rights, including the right of access to the books of account of said firm, which would have belonged hereunder to the said deceased partner.

Ninth. It is further agreed that if no notice in writing shall be given by any of the parties hereto to the others within three months before the time of the expiration hereof, of his or their intent or desire to determine and dissolve the said copartnership at the date above specified for the termination of this agreement, the said copartnership shall continue for one year after the said expiration, upon the same terms as herein provided, and shall thereafter so continue from year to year until three months' notice of dissolution shall have been given in writing by any of the said copartners or the legal representatives of any deceased partner at the time and in the manner aforesaid.

Tenth. It is further agreed that neither of the said parties hereto shall, without the consent in writing of all the other parties, in any way use the firm name or credit, either directly or indirectly, or by indorsement, guaranty, or otherwise, except for firm business, and none of the parties shall, without like consent, become indorser, guarantor, or surety for any other person, except for firm business.

IN WITNESS WHEREOF, the said parties have hereunto severally set their hands and seals the day and year first above written.

1447. Agreement to Continue the Partnership; to be Indorsed on Articles.

WHEREAS, the partnership evidenced by the within articles of agreement has this day expired by the limitations contained herein [or, will expire on the day of next], it is hereby agreed that the same shall be continued on the same terms, and with all the provisions and restrictions therein contained, for the further term of years from this date [or, from the day of , next.]

IN WITNESS [etc., as in Form 1446].

1448. Notice by One Partner to Another, to Determine a Partnership, Under a Power Reserved for the Purpose.

PURSUANT to the power for this purpose contained in certain articles of partnership, dated the day of , and made between you of the one part and me of the other part, I hereby give you notice that it is my intention to determine the partnership now subsisting between us under the said articles forthwith [or, at the expiration of months, to be computed from the date hereof].¹

[Signature.]

[Date.]

[Address to other partner.]

1449. Agreement Settling Partnership Affairs.²

THIS AGREEMENT, made and entered into this the day of , by and between L. M., of the city of , state of , party of the one part, and W. B., of the city of , state of , party of the other part, WITNESSETH: That,

WHEREAS, said parties have heretofore been engaged as partners under the firm name and style of M. & B., in the business of ; and,

WHEREAS, said partnership expired by limitation on the day of , ; and,

WHEREAS, the affairs of said firm are still unsettled — It has assets on hand and demands, and claims due it. It has firm liabilities of various kinds. It has an uncompleted contract in , , and is liable on guarantees of presses sold and erected by it — all these things as well as unsettled firm affairs have to be adjusted and closed up.

Now, then, in order to bring about a final and full settlement of the business affairs of said firm, said L. M. and W. B. do now enter into this agreement, each binding himself to faithfully carry out the same.

First. All of the moneys, accounts, demands, claims, notes, and bills receivable belonging to the firm are to go into the exclusive possession of the said W. B. He is hereby authorized to take immediate possession of the same, and he alone is to collect and receive all the moneys, accounts, demands, claims, notes, and bills receivable due to said firm from third persons, and his receipt for same shall be a full acquittance to the debtors of said firm. All the balance of the property of the firm is to remain under the joint control of both the said M. and the said B., and is to remain where it is now unless removed by consent of both parties, and is not to be used or sold except by consent of both; but when any of said property is sold, the purchase money is to be received by and go into the hands of said B. alone. The said B. is to apply all firm moneys coming into his hands as rapidly as possible to the payment of the firm liabilities. Some of the firm liabilities are represented by the promissory notes, or acceptances of the firm. These notes or acceptances may be paid by said B. out of said firm assets without further consultation with the said M.; but no other demands or claims against said firm are to be paid by said B. out of said assets until they have been approved by both said M. and the said B. After said firm liabilities have been paid in full, then if there be any surplus of said firm assets, the said B. is to immediately pay over to said M. his proper proportion or share thereof.

¹ If the dissolution is because of a violation of the articles, state it briefly.

² This form and Nos. 1431 and 1450 are to be taken together.

Second. Neither party is to receive any compensation for his time or services in winding up the firm business, but all necessary expenses actually incurred in winding up said firm affairs is to be borne equally by each party. But it is understood that neither party shall undertake any trip or journey about the firm business until the nature and object of such trip or journey is first explained to, and approved by the other.

Third. The affairs of said firm are to be wound up and brought to a final close and settlement as rapidly as possible.

Fourth. Inasmuch as the said W. B. has kept the books of accounts of said firm, it is understood that the said L. M. is to have the right at any time before the affairs of said firm are finally closed, to have access to and to examine said books and accounts, and if any errors are detected in said books and accounts, then in so far as said errors or mistakes have been made in favor of said B., or any third person, the loss resulting therefrom shall be made good by said B. to said firm; and in so far as said errors or mistakes have been made in favor of said M., if any such should be discovered, the loss resulting therefrom shall be made good by said M. to said firm.

Fifth. The said B. is to give the said M. a bond in the penalty of dollars, with _____, of _____, as surety thereon, to secure the faithful performance by the said B. of all the obligations and duties imposed on him by this agreement; and said bond shall be so conditioned as to cover reasonable attorneys' fees and costs incurred by said M. in any action or suit which he may be forced to bring on said bond.

Sixth. Notice of the dissolution of said firm may be published by either party whenever he desires, in the papers of any city where the firm has been doing business.

WITNESS the hands and seals of said L. M. and W. B., the day and date above written.

In presence of

[Signatures and seals.]

1450. Final Settlement and Release.¹

WHEREAS, by an agreement, dated _____, _____, the partnership of the parties hereto, L. M., of _____, and W. B., of _____, trading as M. & B., was dissolved, having expired by limitation, and all assets of the firm were thereby placed in the hands of said W. B., with full authority to collect and receive all moneys, accounts, and other assets due the said firm, and to apply the same to the payment of the firm liabilities, and after payment thereof to pay over to the said M. his proper proportion or share of any balance; and,

WHEREAS, the said W. B. has duly and faithfully performed his part of the agreement of dissolution above mentioned, and has duly collected and received all moneys, accounts, demands, claims, notes, and hills receivable due to the said firm from third parties, and has applied the same to the payment of the firm liabilities, and is prepared to pay over to the said M. his full proportion and share of the balance of assets remaining; and,

WHEREAS, the said B. has entered into bond with surety in the sum of _____ dollars, with the said M., to fully and faithfully carry out and perform the duties and obligations imposed on him by the said agreement, which said bond is appended to said agreement of _____,

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the premises, and of other good and sufficient considerations them thereunto

¹See also Forms Nos. 1431 and 1449.

moving, the said parties hereto do covenant and agree to, and with each other, and their respective executors, administrators, and assigns, as follows:

1. The said M. agrees that the said B. has fully and faithfully performed all the duties and obligations imposed on him by the said agreement of , 18 , and that the balance due and owing, as adjusted between the parties hereto, from the said B. to the said M., is dollars in cash, dollars of the stock at par value of the Company, of , and one-half of the net amount that may be recovered by way of set-off in the suit of the Company against M. & B., in the court of of county, , which is to be withheld by the said B. until final adjustment and settlement of the said suit.

2. The said B. agrees upon cancellation and delivery to him by the said M. of the said bond of dollars, conditioned for the faithful performance of the duties imposed on him, as aforesaid, to pay and transfer unto the said M., dollars in cash, dollars of the capital stock of the Company, and upon final settlement of the said suit of the Company against M. & B., the further sum of one-half of the net amount recovered therein by way of set-off after payment of all costs and expenses of said suit.

3. It is expressly understood and agreed that under this settlement W. B. is to retain all office furniture and other property of the late firm not yet reduced to cash, and that there is to be no further accounting by him to L. M., except as respects the sum now in dispute with Company, as aforesaid, said several payments and transfer being received in full settlement, payment and discharge of the proportion of the balance due said M. on settlement of the firm affairs.

4. And the said parties hereto do remise, release, quitclaim, and forever discharge each unto the other all and all manner of actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, executions, claims, and demands, whatsoever, both at law and in equity, and including any claims for libel or slander arising from any words or expressions contained in writings or uttered in conversation of and concerning the other by the parties hereto, always excepting only the possible claim against the late firm of M. & B., by the Company, upon two notes of the Company, as to which any future liability is to be borne by the parties hereto in the same proportions as though this agreement had not been made.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this day of , . [Signatures and seals.]

In presence of

1451. Memorandum of Dissolution Indorsed on the Articles.

By mutual consent of the parties to the within agreement, the partnership thereby formed is wholly dissolved, except so far as it may be necessary to continue the same for the final liquidation and settlement of the business thereof; and said agreement is to continue in force until such final liquidation and settlement be made, and no longer. A. B. only [or, each of the parties] is authorized to sign in liquidation.

IN WITNESS [etc., as in Form 1450].

1452. Advertisement of Dissolution.

NOTICE is hereby given, that the partnership lately subsisting between A. B. and Y. Z., of _____, under the firm name of B. & Z., expired on the day of _____ [or, was dissolved on the _____ day of _____, by mutual consent, or, pursuant to the terms of the articles]. All debts owing to the said partnership are to be received by said A. B., and all demands on the said partnership are to be presented to him for payment [or, A. B. is authorized to settle all debts due to and by the firm].

[Date.]

[Signature of partners.]

1453. Advertisement of a Partner's Retiring.

NOTICE is hereby given, that the partnership between A. B., C. D., and E. F. was dissolved on the _____ day of _____, so far as relates to the said E. F. All debts due to the said partnership, and those due by them, will be settled with and by the remaining partners [who will continue the business under the firm of B. & D.].

[Date.]

[Signatures of the partners.]

II. LIMITED PARTNERSHIP.**1454. Certificate of Formation of Limited Partnership.**

STATE OF NEW YORK, }
County of _____, } ss.

We, S. C., H. R., J. L., and A. H., all persons of full age, the subscribers, having formed a limited copartnership, pursuant to the provisions of the statute of the state of New York, do hereby certify:

1. That the name of the firm under which said copartnership is to be conducted is C. & R., and the county wherein the principal place of business is to be located is _____ county

2. That the general nature of the business intended to be transacted by such copartnership is the manufacture, purchase, and sale of clothing.

3. That the names of all the general and special partners interested therein, and their respective places of residence, are as follows: S. C., residing at _____ street, in _____, state of _____, and H. R., residing at _____ street, in the said city and state, are the general partners; J. L., residing at No. _____, street, in the city and state aforesaid, and A. H., residing at No. _____, street, in the city and state aforesaid, are the special partners. All of said persons are of full age.

4. That the amount of capital which the said J. L., one of the special partners, has contributed to the common stock in cash is the sum of _____ dollars, and the amount of capital which the said A. H., the other of the said special partners, has contributed to the common stock in cash is the sum of _____ dollars.

5. The said partnership is to begin the _____ day of February, _____, and is to end the _____ day of February, _____.

Dated.

[Signatures.]

[Add acknowledgment or proof, as if it were a deed of land.]

1455. Affidavit of Payment of Capital.

STATE OF _____,
 County of _____, } ss.

H. R., being duly sworn, says that he is one of the general partners named in the foregoing certificate; that the sums specified in the said certificate to have been contributed to the common stock by each of the special partners therein named, to wit: the sum of _____ dollars each, has been actually and in good faith paid in cash by each of the said special partners.

Sworn to before me, this _____

[Signature.]

day of _____,

[Signature of officer.]

1456. Designation of Newspapers in Which Publication is to be Made.

LET the terms of the limited partnership between A. B., C. D., and E. F. be published in the _____ and the _____, which papers are published in _____, in _____ county, and the said _____ being published in the city or town in which the principal place of business of said partnership is intended to be located [or, the said _____ being the newspaper published nearest to the city or town in which the principal place of business of said partnership is intended to be located].

[Signature of clerk of the county of _____.]

1457. Affidavit of Publication, by Printer of Newspaper.

COUNTY OF _____, ss.

A. B., being duly sworn, says, that he is printer [or publisher] of the newspaper known as the [insert name of newspaper], published daily or weekly, at [insert place of its publication], and that the advertisement, a copy whereof is hereto annexed, was published in said newspaper, once in each week, for six weeks successively—that is to say, in the issues of said newspaper, dated respectively the _____ day of _____, the _____ day of _____, the _____ day of _____, the _____ day of _____, the _____ day of _____, and the _____ day of _____ [inserting here the dates when the advertisement appeared].

Sworn [etc., as in Form 1455].

[Signature.]

1458. Certificate of Continued Use of Firm Name.¹

WHEREAS, the copartnership, heretofore existing under the firm name of A., B. & Co., has been dissolved by the retirement of B., but the business is to be continued by the subscribers, one of whom was a copartner in said firm; and,

WHEREAS, the said copartnership had business relations with foreign countries [or, was a copartnership within this state, and had conducted business therein for a period of three years—or, was a limited partnership formed under the laws of this state, and A. and C., members thereof, are the general partners—or, a majority of the general partners], in the continued partner-

¹ See Partnership Law, §§ 20, 21, Birdseye. C. & G. Cons. Laws, 1909, pp. 3731-3733.

ship hereinafter referred to as specified in the Partnership Law of the state of New York.

NOW, THEREFORE, we, A., C., and D., whose places of abode are in the city of _____, and E., whose place of abode is in the city of _____, do hereby certify, pursuant to said statute, that we are the persons now and hereafter dealing under the said firm name of A., B. & C. [Signatures.]

[Date.]

[Add acknowledgment by signers.]

CHAPTER XLVII.

PATENTS.

THIS chapter embraces only forms connected with letters patent, issued by the United States for inventions, designs, etc. The laws of many foreign countries allow Americans to take out patents there, but this subject is not here embraced, nor are patents for land.

The rules of practice relating to the grant of patents for inventions are published for gratuitous distribution. The observance of the forms, in all cases to which they may be applicable, is recommended to inventors and attorneys.

Both citizens and aliens are allowed to take out patents here. In case of the death of the actual inventor, the patent will be issued to his representatives. In case of an assignment, recorded in the patent office, of the whole interest, or of an undivided part interest in the patent, the patent may be issued to the assignee, or to the inventor and assignee jointly, as the case may be.

If it appears that the inventor, at the time of making his application, believed himself to be the first inventor or discoverer, a patent will not be refused on account of the invention or discovery, or any part thereof, having been known or used in any foreign country before his invention or discovery thereof, if it had not been before patented or described in any printed publication.

Application for letters-patent must be made to the commissioner. A complete application includes the petition, specification, and oath, and also the drawings, etc., when required. All the parts of the application should be deposited in the office at the same time. The petition must state the name, residence, and post-office address of the petitioner, designate by title the invention, and contain a reference to the specifications, and be signed by the applicant. The specification is a written description, whose terms are to be so clear that a person skilled in the art or science to which the invention appertains, should be able to construct and use the same. It also should contain a detailed description of the invention, and in case of improvements, point out the particular point to which the improvement relates.

It is desirable that the arrangement of the specification should be framed in the following manner:

1. The preamble should state the name and residence of the applicant, and the title of the invention.
2. A general statement of the object and nature of the invention.
3. A brief description of the several views of the drawings (if the invention admits of such illustration).
4. A detailed description.
5. Claim or claims.
6. Signature of inventor.
7. Signatures of two witnesses.

The specification must be signed by the inventor or his personal representative, and the signature is to be attested by two witnesses. As to the contents of the oath, see the forms given below.

As to the requisites of drawings, it is desirable to consult for detailed description the pamphlet issued for gratuitous distribution by the patent office. Sometimes it is necessary to furnish models in applying for letters-patent, and when the invention or discovery is a composition of matter, the applicant is also sometimes required to furnish specimens of the composition, and of its ingredients. Where the article is not perishable, a specimen of the composition, in proper form for preservation by the office, must be furnished.

The regulations relating to the examination of the invention, and to procedure, will be found in the rules issued by the patent office.

Every patent or any interest therein is assignable, and may also be granted over, mortgaged, or licensed. To be effective as to subsequent purchasers or mortgagees, for a valuable consideration, without notice, an assignment, grant, or conveyance of a patent must be recorded within three months in the patent office. If such conveyance, etc., is acknowledged before any notary public, or any commissioner of the United States circuit court, or before any secretary of legation or consular officers, the certificate of such acknowledgment shall be prima facie evidence of the execution of such assignment, or conveyance. Conditional assignments, recorded in the patent office, are regarded as absolute until canceled with the written consent of both parties, or by the decree of a competent court.

The following is the schedule of fees and of prices of publications of the patent office:

| | |
|--|---------|
| On filing each original application for a patent, except in design cases. | \$15.00 |
| On issuing each original patent, except in design cases..... | 20.00 |
| In design cases: | |
| For three years and six months..... | 10.00 |
| For seven years | 15.00 |
| For fourteen years | 30.00 |
| On every application for the reissue of a patent..... | 30.00 |
| On filing each disclaimer..... | 10.00 |
| On an appeal for the first time from the primary examiner to the examiners-in-chief | 10.00 |
| On every appeal from the examiners-in-chief to the commissioner.... | 20.00 |
| For certified copies of patent if in print: | |
| For specification and drawing, per copy..... | .05 |
| For the certificate | .25 |
| For the grant | .50 |
| For certifying to a duplicate of a model..... | .50 |
| For manuscript copies of records, for every one hundred words or fraction thereof | .10 |
| If certified, for the certificate, additional..... | .25 |
| For twenty-coupon orders, each coupon good for one copy of a printed specification and drawing, and receivable in payment for prints, Official Gazette, and Roster of Attorneys..... | 1.00 |
| For one hundred coupons in stub book..... | 5.00 |
| For uncertified copies of the specifications and accompanying drawings of patent, if in print, each..... | .05 |
| For the drawings, if in print..... | .05 |
| For copies of drawings not in print, the reasonable cost of making them. | |
| For photo prints of drawings, for each sheet of drawings: | |
| Size 10 by 15 inches, per copy..... | .25 |
| Size 8 by 12½ inches, per copy..... | .15 |
| For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under..... | 1.00 |
| Of over three hundred and under one thousand words..... | 2.00 |
| For each additional thousand words or fraction thereof..... | 1.00 |

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| For abstracts of title to patents or inventions: | |
| For the search, one hour or less, and certificate..... | \$1.00 |
| Each additional hour or fraction thereof..... | .50 |
| For each brief from the digest of assignments of two hundred words or less | .20 |
| Each additional hundred words or fraction thereof..... | .10 |
| For searching titles or records, one hour or less..... | .50 |
| Each additional hour or fraction thereof..... | .50 |
| For assistance to attorneys in the examination of publications in the Scientific Library, one hour or less..... | 1.00 |
| Each additional hour or fraction thereof..... | 1.00 |
| For copies of matter in any foreign language, for every one hundred words or a fraction thereof..... | .10 |
| For translation, for every one hundred words or fraction thereof.... | .50 |
| THE OFFICIAL GAZETTE: | |
| Annual subscriptions | 5.00 |
| For postage upon foreign subscriptions, except those from Canada and Mexico, \$5 or more as required. Moneys received from foreign subscribers in excess of the subscription price of \$5 will be deposited to the credit of the subscriber and applied to postage upon the subscription as incurred. All communications respecting the Gazette and all subscriptions should be addressed to the Superintendent of Documents, Government Printing Office. | |
| Single numbers | .10 |
| Decision leaflets | .05 |
| Trade-mark supplements | .05 |
| For bound volumes of the OFFICIAL GAZETTE: | |
| Semiannual volumes, from January 1, 1872, to June 30, 1883, full sheep binding, per volume..... | 4.00 |
| In half sheep binding, per volume..... | 3.50 |
| Quarterly volumes, from July 1, 1883, to December 31, 1902, full sheep binding, per volume | 2.75 |
| Bimonthly volumes, from January 1, 1903, to March 1, 1906, full sheep binding, per volume..... | 2.50 |
| Bimonthly volumes, from March 1, 1906, to January 1, 1909, tan duck binding | 2.50 |
| Monthly volumes, from January 1, 1909, tan duck binding, per volume | 2.50 |
| Monthly volumes, unbound with title page, digest, and index, per volume | .50 |
| For the annual index, from January, 1872, to January 1, 1906, full law binding, per volume..... | 2.00 |
| In paper covers, per volume..... | 1.00 |
| For the annual index from January 1, 1906, buckram binding..... | 2.00 |
| In paper covers, per volume..... | 1.00 |
| For the general index—a list of inventions patented from 1790 to 1873—three volumes, full law binding, per set..... | 10.00 |
| For the index from 1790 to 1836— one volume, full law binding.... | 5.00 |
| For the Library edition, monthly volumes to January 1, 1906, containing the specifications and photolithographed copies of the drawings of all patents issued during the month, certified, bound in full sheep, per volume..... | 5.00 |
| In half sheep to January 1, 1906, per volume..... | 3.00 |
| For the Library edition, monthly volumes from January 1, 1906, tan duck binding | 5.00 |
| For the index to patents relating to electricity, granted by the United States prior to June 30, 1882, one volume, 250 pages, bound... | 5.00 |
| In paper covers | 3.00 |

| | |
|---|--------|
| Annual appendixes for each fiscal year subsequent to June 30, 1882, paper covers | \$1.50 |
| For commissioner's decisions: | |
| For 1869-70-71, one volume, full law binding..... | 2.00 |
| For 1872-73-74, one volume, full law binding..... | 2.00 |
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Pamphlets containing the patent laws, and directions for proceedings in the patent office are issued by the office, and may be had by addressing the commissioner. New editions are published often, being corrected to conform to the existing state of the law. If correctly followed, they are a sufficient guide in ordinary cases; but more experience is necessary than is often supposed, to enable an applicant to frame his specification and claim a right. In respect to these the general rule is, that the invention must be so fully and accurately described as to enable any person skilled in the proper branch of art or science, to make and use the thing for which the patent is asked; and the parts for which a patent is asked must be defined with precision. Unless the invention is unusually simple, or the inventor has more than average experience in framing legal instruments, it is wise to consult a reliable patent agent or an experienced patent lawyer.

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I. OFFICIAL FORMS.

1455a. Petition by Sole Inventor.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____, in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, prays that letters-patent may be granted to him for the improvement in _____, set forth in the annexed specification.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

1456a. Petition by Joint Inventors.

TO THE COMMISSIONER OF PATENTS:

Your petitioners, and , citizens of the United States and residents, respectively, of , in the county of and state of , and of , in the county of and state of [or, subjects, etc.], whose post-office addresses are, respectively, and , pray that letters-patent may be granted to them, as joint inventors, for the improvement in , set forth in the annexed specification.

Signed at , in the county of and state of , this day of , 19 .

1457a. Petition by an Inventor, for Himself and Assignee.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, , a citizen of the United States and a resident of , in the county of and state of [or, subject, etc.], whose post-office address is , prays that letters-patent may be granted to himself and , a citizen of the United States and a resident of , in the county of and state of , whose post-office address is , as his assignee, for the improvement in , set forth in the annexed specification.

Signed at , in the county of and state of , this day of , 19 .

1458a. Petition With Power of Attorney.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, , a citizen of the United States, and a resident of , in the county of and state of [or, subject, etc.], whose post-office address is , prays that letters-patent may be granted to him for the improvement in , set forth in the annexed specification; and he hereby appoints , of , state of , his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the patent office connected therewith.

Signed at , in the county of and state of , this day of , 19 .

1459. Petition by an Administrator.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, , a citizen of the United States and a resident of , in the county of and state of [or, subject, etc.], whose post-office address is , administrator of the estate of , late a citizen of , deceased [as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear], prays that letters-patent may be granted to him for the invention of the said [improvement in], set forth in the annexed specification.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

_____,
Administrator, etc.

1460. Petition by an Executor.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____, in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, executor of the last will and testament of _____, late a citizen of _____, deceased [as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear], prays that letters-patent may be granted to him for the invention of the said [improvement in _____], set forth in the annexed specification.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

_____,
Executor, etc.

1461. Petition by a Guardian of an Insane Person.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____, in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, and who has been appointed guardian [or, conservator or representative] of _____ [as by reference to the duly certified copy of the order of court, hereto annexed, will more fully appear], prays that letters-patent may be granted to him for the invention of the said [improvement in _____], set forth in the annexed specification.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

_____,
Guardian, etc.

1462. Petition for a Reissue (by the Inventor).

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____, in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, prays that he may be allowed to surrender the letters-patent for an improvement in _____, granted to him _____, 19 _____, whereof he is now sole owner [or, whereof _____, on whose behalf and with whose assent this application is made, is now sole owner, by assignment], and that letters-patent may be reissued to him [or, the said _____] for the same invention upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

[Signature.]

[Assent of assignee to reissue.]

The undersigned, assignee of the entire [or, of an undivided] interest in the above-mentioned letters-patent, hereby assents to the accompanying application.

[Signature.]

1463. Petition for a Reissue (by the Assignee).

[To be used only when the inventor is dead.]

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____, in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, prays that he may be allowed to surrender the letters-patent for an improvement in _____, No. _____, granted _____, 19 _____, to _____, now deceased, whereof he is now owner, by assignment of the entire interest, and that the letters-patent may be reissued to him for the same invention, upon the annexed amended specification. With this petition is filed an abstract of title [or, an order for making and filing the same, etc.].

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

[Signature.]

1464. Petition for Letters Patent for a Design.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____ in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, prays that letters-patent may be granted to him for the term of three and one-half years [or, seven years or fourteen years] for the new and original design for _____, set forth in the annexed specification.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

[Signature.]

1465. Petition for the Renewal of a Forfeited Application.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, _____, a citizen of the United States and a resident of _____, in the county of _____ and state of _____ [or, subject, etc.], whose post-office address is _____, represents that on _____, 19 _____, he filed an application for letters-patent for an improvement in _____, serial number _____, which application was allowed _____, 19 _____, but that he failed to make payment of the final fee within the time allowed by law. He now makes renewed application for letters-patent for said invention, and prays that the original specification, oath, drawings, and model may be used as a part of this application.

Signed at _____, in the county of _____ and state of _____, this _____ day
of _____, 19 _____.

[Signature.]

1466. Specification for an Art or Process.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, _____, a citizen of the United States, residing at _____, in the county of _____ and state of _____ [or, subject, etc.], have invented new and useful improvements in processes of extracting gold from its ores, of which the following is a specification:

This invention relates to the process of extracting gold from its ores by means of a solution of cyanide of an alkali or alkaline earth, and has for its object to render the process more expeditious and considerably cheaper.

In extracting gold from its ores by means of a solution of cyanide of potassium, sodium, barium, etc., the simultaneous oxidation of the gold is necessary, and this has hitherto been effected by the action of the air upon the gold which is rendered oxidizable thereby by the action of the cyanide solution.

Instead of depending solely upon the agency of the air for the oxidizing action I employ. to assist the oxidation of the gold, ferricyanide of potassium or another ferricyanogen salt of an alkali or of an earth alkali in an alkaline solution. By this means the oxidation, being rendered very much more energetic, is effected with a considerably smaller quantity of the solvent. Thus, by the addition of ferricyanide of potassium or other ferricyanides to the cyanide of potassium solution, as much as eighty per cent. of potassium cyanide may be saved.

It may be remarked that the ferricyanide of potassium alone will not dissolve the gold and does not therefore come under the category of a solvent hitherto employed in processes of extraction. It does not therefore render unnecessary the employment of the simple cyanide as a solvent, but only reduces the amount required owing to the capacity of the ferricyanide to assist the air to rapidly oxidize the gold in the presence of the simple salt. Consequently the cyanogen of the latter is not used to form the gold cyanide compound.

I claim:

The process of extracting gold from its ores consisting in subjecting the ores to the dissolving action of cyanide of potassium in the presence of ferricyanide of potassium, substantially as herein described.

[Signature.]

Witnesses:

[Signatures.]

1467. Specification for a Machine.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, A. B., a citizen of the United States, residing at L., in the county of M., and state of N. [or, subject, etc.], have invented a new and useful meat-chopping machine, of which the following is a specification:

My invention relates to improvements in meat-chopping machines in which vertically-reciprocating knives operate in conjunction with a rotary chopping-block; and the objects of my improvement are, first, to provide a continuously-lubricated bearing for the block; second, to afford facilities for the proper adjustment of the knives independently of each other in respect to the face of the block; and, third, to reduce the friction of the reciprocating rod which carries the knives.

I attain these objects by the mechanism illustrated in the accompanying drawing, in which —

Figure 1 is a vertical section of the entire machine; fig. 2, a top view of the machine as it appears after the removal of the chopping-block and knives; fig. 3, a vertical section of a part of the machine on the line 12, fig. 2; and fig. 4, a detailed view in perspective of the reciprocating cross-head and its knives. Similar letters refer to similar parts throughout the several views.

The table or plate A, its legs or standards B B, and the hanger *a*, secured to the under side of the table, constitute the framework of the machine. In the hanger, *a* turns the shaft-D, carrying a flywheel E, to the hub of which is attached a crank *o*, and a crank-pin *p*, connected by a link *b*, to a pin passing through a crosshead G, and to the latter is secured a rod H, having at its upper end a crosshead I, carrying the adjustable chopping-knives *d d*, referred to hereinafter.

The crosshead G, reciprocated by the shaft D, is provided with anti-friction rollers *e e*, adapted to guides *f f*, secured to the underside of the table A, so that the reciprocation of this crosshead may be accompanied with as little friction as possible.

To the under side of a wooden chopping-block J is secured an annular rib *h*, adapted to and bearing in an annular groove *i* in the table A. (See Figs. 1 and 2.) This annular groove or channel in not of the same depth throughout, but communicates at one or more points (two in the present instance) with pockets or receptacles *j j* wider than the groove and containing supplies of oil, in contact with which the rib *h* rotates, so that the continuous lubrication of the groove and rib is assured. The rod H passes through and is guided by a central stand K, secured to the table A, an projecting through a central opening in the chopping-block without being in contact therewith, the upper portion of the said stand being contained within a cover *k*, which is secured to the block, and which prevents particles of meat from escaping through the central opening of the same.

The crosshead I, previously referred to, and shown in perspective in Fig. 4, is vertically adjustable on the rod H, and can be retained after adjustment by a set-screw *x*, the upper end of the rod being threaded for the reception of nuts, which resist the shocks imparted to the crosshead when the knives are brought into violent contact with the meat or the chopping-block.

The knives *d d* are adjustable independently of each other and of the said crosshead, so that the coincidence of the cutting edge of each knife with the face of the chopping-block may always be assured.

I prefer to carry out this feature of my invention in the manner shown in Fig. 4, where it will be seen that two screwrods *m m* rise vertically from the back of each knife and pass through lugs *n n* on the crosshead, each rod being

furnished with two nuts, one above and the other below the lug through which it passes. The most accurate adjustment of the knives can be effected by the manipulation of these nuts.

A circular casing *p* is secured to the chopping-block, so as to form on the same a trough *P* for keeping the meat within proper bounds; and on the edge of the annular rib *h*, secured to the bottom of the block, are teeth *r*, for receiving those of a pinion *q*, which may be driven by the shaft *D* through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

This shaft *D* may be driven by a belt passing round the pulleys *s*, or it may be driven by hand from a shaft *W*, furnished at one end with a handle *t*, and at the other with a cogwheel *R*, gearing into a pinion on the said shaft *D*.

A platform *T* may be hinged, as at *w*, to one edge of the table *A*, to support a vessel in which the chopped meat can be deposited. The means by which it may be supported are shown in full lines, and the most convenient method of disposing of it when not in use is shown in dotted lines, in Fig. 1.

I am aware that prior to my invention meat-chopping machines have been made with vertically-reciprocating knives operating in conjunction with rotating chopping-blocks. I, therefore, do not claim such a combination broadly; but

I claim:

1. The combination, in a meat-chopping machine, of a rotary chopping-block having an annular rib, with a table having an annular recess and a pocket communicating with the said recess, all substantially as set forth.

2. In a meat-chopping machine, the combination of a rotary chopping-block with a reciprocating crosshead carrying knives, each of which is vertically adjustable on the said crosshead independently of the other, substantially as described.

3. The knife *d*, having two screwrods *m m*, attached to its back, substantially as shown, for the purposes specified.

4. The combination, in a meat-chopping machine, of the reciprocating rod, carrying the knives, the crosshead secured to the said rod, and having anti-friction rollers, with guides adapted to the said rollers, all substantially as set forth. A. B.

Witnesses:

C. D.

E. F.

1468. Specification for a Composition of Matter.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, A. B., a citizen of the United States, residing at *L.*, in the county of *M.*, and state of *N.* [*or*, subject, etc.], have invented a new and useful composition of matter to be used for the removal of hair and grease from hides preparatory to tanning, of which the following is a specification:

My composition consists of the following ingredients, combined in the proportions stated, viz.:

| | |
|--|-------------|
| Water substantially pure | 500 gallons |
| Unslaked lime | 350 pounds |
| Soda-ash (sodium carbonate) | 100 pounds |
| Salt-peter (nitrate of an alkali metal)..... | 20 pounds. |
| Sulphur (preferably flowers of sulphur)..... | 10 pounds |

These ingredients are to be thoroughly mingled by agitation.

In using the above-named composition the hides should first be freed from all salt and impurities, by soaking green hides one day and dry hides eight days. The hides so cleaned are then placed in the said solution, and allowed to remain in it forty-eight hours. They should then be removed from the solution and unhaired in the usual way.

By the use of the above composition the hair is speedily and thoroughly loosened, and the hides, while retaining all of that portion of the substance which can be converted into leather, are at the same time entirely cleaned from grease and other substances which would prevent them from being tanned quickly.

I am aware that a composition consisting of soda-ash, water, lime, and sulphur has been used for the same purpose, and that a patent therefore was granted to C. D., July 10, 18 , No. . I am also aware that salt-peter has been used in depilatory processes; but I am not aware that all of the ingredients of my composition have been used together.

I claim:

1. The herein-described composition of matter, consisting of water, unslaked lime, soda-ash, salt-peter, and sulphur, substantially as described and for the purpose specified.

2. The herein-described composition of matter for depilating and preparing hides for tanning, consisting of pure water, five hundred gallons; unslaked lime, three hundred and fifty pounds; soda-ash, one hundred pounds; salt-peter, twenty pounds, and flowers of sulphur, ten pounds, substantially as described.

A. B.

Witnesses:

C. D.

E. F.

1469. Petition for a Design.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, _____, a citizen of the United States, residing at _____, in the county of _____, and state of _____ [or, subject, etc.], have invented a new, original, and ornamental design for watch-cases, of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

The figure is a plan view of a watch case, showing my new design.

I claim:

The ornamental design for a watch case, as shown.

Witnesses:

[Signature.]

[Signatures.]

1470. Oath to Accompany an Application for United States Patent.

' } ss.
, }

¹ , the above-named petitioner , being sworn [or affirmed], depose and say that citizen of² and resident of³ , that verily believe to be the original, first, and⁴ inventor of the improvement in⁵ described and claimed in the annexed specification; that do not know and do not believe that the same was ever known or used before invention or discovery thereof, or patented or described in any printed publication in any country before invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by or legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by or representatives or assigns in any country foreign to the United States, except as follows:⁶

Inventor's full name: ⁷

Sworn to and subscribed before me
this day of , 19 .

[Seal.]

[Signature of justice or notary.]

8

[Official character.]

1471. Oath to Accompany an Application for United States Patent for Design.

' } ss.
, }

¹ , the above-named petitioner , being sworn (or affirmed), depose and say that citizen of² and resident of³ , that verily believe to be the original, first, and⁴ inventor of the design for⁵ described and claimed in the annexed specification; that do not know and do not believe that the same was ever known or used before invention thereof, or patented or described in any printed publication in any country before invention thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said design has not been patented in any country foreign to the United States on an application filed by or legal representatives or assigns more than four months prior

¹ If the inventor be dead, the oath will be made by the administrator; if insane, by the guardian, conservator, or legal representative. In either case the affiant will declare his belief that the party named as inventor was the original and first inventor.

² If the applicant be an alien, state of what foreign country he is a citizen or subject.

³ Give residence address in full; as "a resident of, in the county of and State of," or "of No. street, in the city of, county of and State (Kingdom, Republic, or Empire) of"

⁴ "Sole" or "joint."

⁵ Insert title of invention.

For notes 6, 7 and 8 see next page.

1473. Oath by an Applicant for a Reissue (Assignee).*[To be used only when the inventor is dead.]*

' }
, } ss.

, the above-named petitioner, being duly sworn (or affirmed), deposes and says that he verily believes that the aforesaid letters patent granted to are (here follows Form 1472, the necessary changes being made); that the entire title to said letters patent is vested in him; and that he verily believes the said to be the first original inventor of the invention set forth and claimed in the foregoing amended specification; and that the said is now deceased.

Sworn to and subscribed before me

this day of , 19 .

*[Seal.]**[Signature of justice or notary.]**[Official character.]***1474. Supplemental Oath to Accompany a Claim for Matter Disclosed But Not Claimed in an Original Application.**

' }
, } ss.

, whose application for letters patent for an improvement in serial No. , was filed in the United States Patent Office on or about the day of , 19 , being duly sworn (or affirmed), deposes and says that the subject-matter of the foregoing amendment was part of his invention, was invented before he filed his original application, above identified, for such invention, was not known or used before his invention, was not patented or described in a printed publication in any country more than two years before his application, was not patented in a foreign country on an application filed more than twelve months before his application, was not in public use or on sale in this country for more than two years before the date of his application, and has not been abandoned.

Sworn to and subscribed before me

this day of , 19 .

*[Seal.]**[Signature of justice or notary.]**[Official character.]***1475. Oath as to the Loss of Letters Patent.**

' }
, } ss.

, being duly sworn (or affirmed), depose and say that the letters patent No. , granted to him, and bearing date on the day of , 19 , have been either lost or destroyed; that he has made diligent search for

the said letters patent in all places where the same would probably be found, if existing, and that he has not been able to find them.

Subscribed and sworn to before me

this day of , 19 .

[Seal.]

[Signature of justice or notary.]

[Official character.]

1476. Oath of Administrator as to the Loss of Letters Patent.

, }
, } ss.

, being duly sworn, depose and say that he is administrator of the estate of , deceased, late of , in said county; that the letters patent No. , granted to said , and bearing date of the day of , 19 , have been lost or destroyed, as he verily believes; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and especially among the papers of the decedent, and that he has not been able to find said letters patent.

Administrator, etc.

Subscribed and sworn to before me

this day of , 19 .

[Seal.]

[Signature of justice or notary.]

[Official character.]

1477. Power of Attorney After Application Filed.

[If the power of attorney be given at any time other than that of making application for letters patent, it will be in substantially the following form:]

TO THE COMMISSIONER OF PATENTS:

The undersigned having, on or about the day of , 19 , made application for letters patent for an improvement in (serial number), hereby appoints ¹ of , in the county of and State of , his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the patent office connected therewith.

Signed at , in the county of , state of , this day of , 19 .

1478. Revocation of Power of Attorney.

TO THE COMMISSIONER OF PATENTS:

The undersigned having, on or about the day of , 19 , appointed , of , in the county of and state of , his attorney to

¹ If the power of attorney be to a firm, the name of each member of the firm must be given in full.

prosecute an application for letters patent, which application was filed on or about the day of , 19 , for an improvement in (serial number), hereby revokes the power of attorney then given.

Signed at , in the county of , state of , this day of , 19 .

1479. Amendment.¹

TO THE COMMISSIONER OF PATENTS:

In the matter of my application for letters patent for an improvement in , filed , 19 (serial number), I hereby amend by specification as follows:

By striking out all between the and lines, inclusive, of page ;

By inserting the words " ," after the word " ," in the line of the claim; and

By striking out the claim and substituting therefor the following:

Signed at , in the county of , and state of .

By ,
His Attorney in Fact.

1480. Disclaimer After Patent.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, , a citizen of the United States, residing at , in the county of and state of (or subject, etc.), represents that in the matter of a certain improvement in , for which letters patent of the United States No. were granted to , on the day of , 19 , he is (here state the exact interest of the disclaimant; if assignee, set out liber and page where assignment is recorded), and that he has reason to believe that through inadvertence (accident or mistake) the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters this disclaimer to that part of the claim in said specification which is in the following words, to wit:

Signed at , in the county of , and state of , this day of , 19 .

Witnesses:

¹In the preparation of all amendments a separate paragraph should be devoted to each distinct erasure or insertion, in order to aid the Office in making the entry of the amendment into the case to which it pertains.

1481. Disclaimer During Interference.

INTERFERENCE.

vs.

} Before the examiner of interferences.

Subject-matter:

To THE COMMISSIONER OF PATENTS:

SIR: In the matter of the interference above noted, under the provisions of and for the purpose set forth in Rule 107, I disclaim (set forth the matter as given in declaration of interference), as I am not the first inventor thereof, and I herewith transmit an amendment to my application filed , 19 , serial number , for the purpose of having the above disclaimer embodied as part of my specification.

Signed at , in the county of , and state of , this day of , 19 .

Witnesses:

1482. Appeal From a Principal Examiner to the Examiners-in-Chief.

To THE COMMISSIONER OF PATENTS:

SIR: I hereby appeal to the examiners-in-chief from the decision of the principal examiner in the matter of my application for letters patent for an improvement in , filed , 19 , serial number , which on the day of , 19 , was rejected the second time. The following are the points of the decision on which the appeal is taken: (Here follows a statement of the points on which the appeal is taken.)

Signed at , in the county of , and state of , this day , 19 .

1483. Appeal From the Examiner in Charge of Interferences to the Examiners-in-Chief.

To THE COMMISSIONER OF PATENTS:

SIR: I hereby appeal to the examiners-in-chief from the decision of the examiner of interferences in the matter of the interference between my applications for letters patent for improvement in and the letters patent of , in which priority of invention was awarded to said . The following are assigned as reasons of appeal: (Here should follow an explicit statement of alleged errors in the decision of the examiner of interferences.)

Signed at , in the county of , and state of , this day of , 19 .

1484. Appeal From the Examiners-in-Chief to the Commissioner in Ex Parte Cases.

To THE COMMISSIONER OF PATENTS:

SIR: I hereby appeal to the Commissioner in person from the decision of the examiners-in-chief in the matter of my application for letters patent for an improvement in , filed , 19 , serial number . The fol-

lowing are assigned as reasons of appeal: (Here follow the reason as in Form 1482.)

Signed at _____, in the county of _____, and state of _____, this day of _____, 19 ____.

1485. Appeal From the Examiners-in-Chief to the Commissioner in Interference Cases.

TO THE COMMISSIONER OF PATENTS:

SIR: I hereby appeal to you in person from the decision of the examiners-in-chief, made _____, 19 ____, in the interference between my application for letters patent for improvement in _____ and the letters patent of _____, in which priority of invention was awarded to said _____. The following are assigned as reasons of appeal: (Here should follow an explicit statement of the alleged errors in the decision of the examiners-in-chief.)

Signed at _____, in the county of _____, and state of _____, this day of _____, 19 ____.

1486. Petition From a Principal Examiner to the Commissioner.

Application of _____
 Serial number _____
 Subject of invention _____

TO THE COMMISSIONER OF PATENTS:

Your petitioner avers—

First. That he is the applicant above named.

Second. That said application was filed on the _____ day of _____, 19 ____.

Third. That when so filed said application contained _____ claims.

Fourth. That your petitioner was informed by office letter of the _____, 19 ____, (1) that his _____ claim was rendered vague and indefinite by the employment of the words "_____", which words should be erased; (2) that his _____ claim was met by certain references which were given; and (3) that the _____ claim was mere surplusage and should be eliminated.

Fifth. That on the _____ day of _____ your petitioner filed an amendment so eliminating his _____ claim, and accompanied such amendment with a communication in which he declined to amend such _____ claim, and asked for another action thereon.

Sixth. That your petitioner was then informed by office letter of the _____ day of _____ that the former requirement relating to claim _____ would be adhered to, and that no action would be had on the merits of either claim until said amendment so required had been made.

Wherefore your petitioner requests that the examiner in charge of such application be advised that such amendment so required by him to said _____ claim be not insisted upon, and directed to proceed to examine both said remaining claims upon their merits.

A hearing of this petition is desired on the _____ day of _____, 19 ____.

 Applicant.

 Attorney for Applicant.

1487. Petition for Copies of Rejected and Abandoned Applications.¹

To THE COMMISSIONER OF PATENTS:

The petition of _____, a resident of _____, in the county of _____, and state of _____, respectfully shows:

First. That on the _____ day of _____, 19____, patent No. _____, issued to one _____.

Second. That your petitioner is informed and believes that on the _____ day of _____, 19____, said patentee filed in the United States patent office an application for patent for improvement in _____.

Third. That your petitioner verily believes that said application has not been prosecuted during the past two years and upward; and he also verily believes that the last action had therein was on or about the _____ day of _____, 19____.

Fourth. That said application has therefore become and now stands abandoned.

Fifth. That on the _____ day of _____, 19____, said patentee began suit, in the circuit court of the United States for the _____ district of _____, against your petitioner, which suit is based upon said patent, and the same is now pending and undetermined.

Sixth. Your petitioner is informed and believes that to enable him to prepare and conduct his defense in such suit it is material and necessary that he be allowed access to and copies of the files of such abandoned case.

Seventh. Your petitioner, therefore, requests that he, or _____, in his behalf and as his attorney, be permitted to inspect and be furnished copies of all or any portion of such files.

Petitioner.

By _____,
His Attorney.

_____, }
_____, } ss.:

On this _____ day of _____, 19____, before me, a notary public in and for said county and state, personally appeared _____, the above-named attorney, who, being by me duly sworn, deposes and says that he has read the foregoing petition and knows its contents, and that the same is true, except as to matters therein stated on information or belief, and as to those matters he believes it to be true.

_____,
Notary Public.

1488. Preliminary Statement of Domestic Inventor.

vs. }
Interference in the United States Patent Office.
Preliminary statement of

_____, of _____, in the county of _____, and state of _____, being duly sworn (or affirmed), doth depose and say that he is a party to the interference

¹NOTE.—A copy of this petition must be served upon the applicant named in the abandoned application or upon his attorney of record.

declared by the Commissioner of Patents, _____, 19____, between _____'s application for letters patent, filed _____, 19____, serial number _____, and the patent to _____, granted _____, 19____, numbered _____, for a _____; that he conceived the invention set forth in the declaration of interference¹ on or about the _____ day of _____, 19____; that on or about the _____ day of _____, 19____, he first made drawings of the invention (if he has not made a drawing, then he should say that no drawing of the invention in issue has been made); that on or about the _____ day of _____, 19____, he first explained the invention to others; that he first embodied his invention in a full-size machine, which was completed about the _____ day of _____, 19____, and that on the _____ day of _____, 19____, the said machine was first successfully operated, in the town of _____, county of _____, and state of _____, and that he has since continued to use the same, and that he has manufactured others for use and sale to the following extent, viz.: (if he has not embodied the invention in a full-size machine, he should so state, and if he has embodied it, but has not used it, he should so state).

[Signature of inventor.]

Subscribed and sworn to before me this _____ day of _____, 19____.

[Signature of justice or notary.]

[Official character.]

1489. Preliminary Statement of Foreign Inventor.

vs. { Interference in United States Patent Office.
 { Preliminary statement of _____.

_____, of London, in the county of Middlesex, England, being duly sworn, doth depose and say that he is a party to the interference declared by the Commissioner of Patents, _____, 19____, between his application for patent, filed _____, 19____, serial number _____, and the patent of _____, granted _____, 19____, No. _____, for an improvement in _____; that he made the invention set forth in the declaration of interference,¹ being at that time in England; that patents for such invention were applied for and obtained as follows:

Application filed in Great Britain, _____, 19____, patent dated _____, 19____. No. _____; published the _____ day of _____, 19____, and sealed the _____ day of _____, 19____; application filed in France _____, 19____, patent dated _____, 19____, No. _____; published the _____ day of _____, 19____, and sealed the _____ day of _____, 19____. (If a patent has not been obtained in any country it should be so stated.)

That such invention was fully described in a magazine published at _____, on the _____ day of _____, 19____, by _____, entitled _____ (see page _____ of _____).

¹If the party has doubts as to whether the matter of his application is properly involved in the issue as declared, then in lieu of the terms "the invention set forth in the declaration of interference" he may say "the invention contained in the claims of my application (or patent) declared to be involved in this interference" and should specify such claims by number.

such magazine), and in the following newspapers: , of , 19 ; , published at , on , 19 . (If the invention was never described in a printed publication it should be so stated.)

The knowledge of such invention was introduced into the United States under the following circumstances: On , 19 , the said wrote a letter to , residing at , state of , describing such invention and soliciting his services in procuring a patent therefor in the United States. This letter, he is informed and believes, was received by the said on , 19 . Also on , 19 , he wrote a letter to the firm of , of , state of , describing such invention and requesting their assistance in manufacturing and putting it on the market, which letter, he is informed and believes, was received by them on , 19 . Such invention was manufactured by such firm and described in their trade circulars, as he is informed and verily believes, on or about the day of , 19 . (If the invention has not been introduced into the United States otherwise than by the application papers, it should be so stated, and the date at which such papers were received in the United States alleged.)

[Signature of inventor.]

Subscribed and sworn to before me this day of , 19 .

[Signature of justice or notary.]
[Official character.]

1490. Assignment of an Interest in an Invention Before Issue of Letters Patent.

WHEREAS, I, A. B., of L., county of M., state of N., have invented a certain new and useful improvement in , for which I am about to make application for letters patent of the United States; and,

WHEREAS, G. D., of R., county of S., state of N., is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said A. B., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said G. D. the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the day of , 19 , preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the commissioner of patents to issue the said letters patent to the said G. D. as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said G. D. and his legal representatives.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, this 4th day of May, A. D. 19 .

A. B. [SEAL.]

In presence of

O. P.

S. T.

1491. Same, of the Entire Interest in Letters Patent.

WHEREAS, I, A. B., of L., county of M., state of N., did obtain letters patent of the United States for an improvement in , which letters patent are numbered , and bear date the day of , in the year 19 ; and,

WHEREAS, I am now the sole owner of said patent and of all rights under the same; and,

WHEREAS, E. F., of R., county of S., state of N., is desirous of acquiring the entire interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said C. D., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said E. F. the whole right, title, and interest in and to the said improvement in and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said E. F., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at L., in the county of M. and state of N., this day of , .

In presence of

A. B. [SEAL.]

N. P.

O. T.

1492. Same, of an Undivided Interest in Letters Patent.

WHEREAS, I, A. B., of L., county of M., state of N., did obtain letters patent of the United States for an improvement in , which letters patent are numbered , and bear date the day of , in the year ; and,

WHEREAS, C. D., of R., county of S., state of N., is desirous of acquiring an interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said A. B., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said C. D. the undivided one-half part of the whole right, title, and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said C. D., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, at L., in the county of M. and state of N., this day of , .

In presence of

A. B. [SEAL.]

N. P.

O. T.

1493. Same, of Territorial Interest After Grant of Patent.

WHEREAS, I, A. B., of L., county of M., state of N., did obtain letters patent of the United States for improvement in _____, which letters patent are numbered _____, and bear date the _____ day of _____, in the year _____; and,

WHEREAS, I am now the sole owner of the said patent and of all rights under the same in the below-recited territory; and,

WHEREAS, C. D., of R., county of S., state of N., is desirous of acquiring an interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of _____ dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said A. B., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said C. D. all the right, title, and interest in and to the said invention, as secured to me by said letters patent, for, to, and in the state of N. and for, to, or in no other place or places; the same to be held and enjoyed by the said C. D. within and throughout the above-specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, at L., in the county of M. and state of N., this _____ day of _____, 19 _____.

In presence of

A. B. [SEAL.]

S. T.

R. D.

1494. License — Shop-Right.

IN CONSIDERATION of the sum of _____ dollars, to be paid by the firm of _____, of _____, in the county of _____, state of _____, I do hereby license and empower the said _____ to manufacture in said _____ [or, other place agreed upon] the improvement in _____ for which letters patent of the United States No. _____ were granted to me the _____ day of _____, in the year 19 _____, and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at _____, in the county of _____ and state of _____, this _____ day of _____, 19 _____.

In presence of

1495. License — Not Exclusive — With Royalty.

This agreement, made this _____ day of _____, 19 _____, between _____, of _____, in the county of _____ and state of _____, party of the first part, and _____, of _____, in the county of _____ and state of _____, party of the second part, WITNESSETH, that

WHEREAS, letters patent of the United States No. _____ for improvement in _____, were granted to the party of the first part on the _____ day of _____, 19 _____; and

WHEREAS, the party of the second part is desirous of manufacturing containing said patented improvements:

NOW, THEREFORE, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in , and in no other place or places, to the end of the term for which said letters patent were granted, containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of and in each year, of all containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part dollars as a license fee upon every manufactured by said party of the second part containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semiannual returns, or within days thereafter, a discount of per cent. shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided for days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

IN WITNESS WHEREOF, the parties above-named have herenunto set their hands the day and year first above written at , in the county of and state of .

In presence of

1496. Depositions; Notice of Taking Testimony.

, , , 19 .

IN THE MATTER of the interference between the application of for a machine and the patent No. , granted , 19 , to , now pending before the commissioner of patents.

SIR.—You are hereby notified that on Wednesday, , 19 , at the office of , Esq., No. street, , , at o'clock in the forenoon, I shall proceed to take the testimony of , and , all of , as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

[Signature.]

By , His Attorney.

Signed at , in the county of and state of , this day of , 19 .

Witnesses:

[Signatures.]

PROOF OF SERVICE.

, }
 , } ss.

PERSONALLY appeared before me, a [or, other officer], the above-named , who, being duly sworn, deposes and says that he served the above notice upon , the attorney of the said , at o'clock of the day of , 19 , by leaving a copy at his office in , in the county of and state of , in charge of .

[Signature.]

Sworn to and subscribed before me at , in the county of and state of , this day of , 19 .

[SEAL.]

[Signature of justice or notary.]

[Official character.]

(Service may be acknowledged by the party upon whom it is made as follows:

Service of the above-notice acknowledged this day of , 19 .

[Signature.]

By , His Attorney.

1497. Form of Deposition.

BEFORE the commissioner of patents, in the matter of the interference between the application of for a and letters patent No. , granted , 19 , to .

DEPOSITIONS of witnesses examined on behalf of , pursuant to the annexed notice, at the office of , No. street, , on , 19 .

Present, , Esq., on behalf of , and , Esq., on behalf of . , being duly sworn [or, affirmed], doth depose and say, in answer to interrogatories proposed to him by , Esq., counsel for as follows, to wit:

QUESTION 1. What is your name, age, occupation, and residence?

ANSWER 1. My name is ; I am years of age; I am a manufacturer of and reside at , in the state of .

QUESTION 2, etc.

And in answer to cross-interrogatories proposed to him by , Esq., counsel for , he saith:

CROSS-QUESTION 1. How long have you known ?

ANSWER 1. .

1498. Certificate of Officer.

[To follow deposition.]

, }
 , } ss.

I, , a notary public within and for the county of and state of [or, other officer, as the case may be], do hereby certify that the foregoing deposition of was taken on behalf of in pursuance of the

notice hereto annexed, before me, at _____, in the city of _____, in said county, on the _____ day [or, days] of _____, 19____; that said witness was by me duly sworn before the commencement of his testimony; that the testimony of said witness was written out by myself [or, by _____ in my presence]; that the opposing party, _____, was present [or, absent or represented by counsel] during the taking of said testimony; that said testimony was taken at _____, and was commenced at _____ o'clock on the _____ of _____, 19____, was continued pursuant to adjournment on the _____, (etc.) and was concluded on the _____ of said month; that the deposition was read by, or to, each witness, before the witness signed the same; that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of office at _____, in said county, this _____ day of _____, 19____.

[SEAL.]

[Signature of justice or notary.]

[Official character.]

(The magistrate will then append to the deposition the notice under which it was taken, and will seal up the testimony and direct it to the commissioner of patents, placing upon the envelope a certificate in substance as follows):

I hereby certify that the within deposition of _____ [if the package contains more than one deposition give all the names], relating to the matter of interference between _____ and _____, was taken, sealed up, and addressed to the commissioner of patents by me this _____ day of _____, 19____.

[Signature of justice or notary.]

[Official character.]

1499. Notice of Appeal to the Court of Appeals of the District of Columbia in an Ex Parte Case, With Reasons of Appeal and Request for Transcript.

IN THE UNITED STATES PATENT OFFICE.

| | |
|----------------------------|---|
| In re Application of _____ | . |
| Serial No. _____ | . |
| Filed _____ | . |
| Improvements in _____ | . |

TO THE COMMISSIONER OF PATENTS:

SIR.—You are hereby notified of my appeal to the court of appeals of the District of Columbia from your decision, rendered on or about the _____ day of _____, 19____, rejecting my above-entitled application and refusing me a patent for the invention set forth therein.

The following are assigned as reasons of appeal: [here insert in separate counts the specific errors complained of].

By _____,
His Attorney.

1500. Petition for an Appeal to the Court of Appeals of the District of Columbia in an Ex Parte Case.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

| | |
|----------------------|---|
| In re Application of | . |
| Serial No. | . |
| Filed | . |
| Improvements in | . |

TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:

Your petitioner, _____, of _____, in the county of _____, and state of _____, respectfully represents:

That he is the original and first inventor of certain new and useful improvements in _____.

That on the _____ day of _____, 19____, in the manner prescribed by law, he presented his application to the patent office, praying that a patent be issued to him for the said invention.*

That such proceedings were had in said office upon said application, that on the _____ day of _____, 19____, it was rejected by the commissioner of patents, and a patent for said invention was refused him.

That on the _____ day of _____, 19____, your petitioner, pursuant to §§ 4912 and 4913, R. S. U. S., gave notice to the commissioner of patents of his appeal to this honorable court from his refusal to issue a patent to him for said invention upon said application as aforesaid, and filed with him, in writing, the following reasons of appeal: [*here recite the reasons of appeal assigned in the notice to the commissioner*].

That the commissioner of patents has furnished him a certified transcript of the record and proceedings relating to said application for patent, which transcript is filed herewith, and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the commissioner as aforesaid, and that said appeal may be determined and the decision of the commissioner be revised and reversed, that justice may be done in the premises.

By _____,

[*To be signed here by a member of the bar of the court of appeals of D. C.*]

His Attorney.

Solicitor and of counsel.

1501. Notice of Appeal to the Court of Appeals of the District of Columbia in an Interference Case, With Reasons of Appeal and Request for Transcript.

IN THE UNITED STATES PATENT OFFICE — BEFORE THE COMMISSIONER OF PATENTS.

| | | |
|-----|---|--|
| vs. | } | Interference No. _____ . Subject-matter: |
| | | Improvements in _____ . |

And now comes _____, by _____, his attorney, and give notice to the commissioner of patents of his appeal to the court of appeals of the District of

Columbia from the decision of the said commissioner, rendered on or about the day of , 19 , awarding priority of invention to in the above-entitled case, and assigns as his reasons of appeal the following: [*here set out in separate counts the specific errors in the commissioner's decision complained of*].

By ,
His Attorney.

1502. Petition for an Appeal to the Court of Appeals of the District of Columbia in an Interference Case.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

| | | | |
|-----|---------------|---|---------------------------------|
| | , Appellant, | } | In re Interference No. . |
| vs. | , Respondent. | | |

TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA:

[*As in Form No. 1500, to *, and from thence as follows:*]

That thereafter, to wit, on the day of , 19 , an interference proceeding was instituted and declared between his said application and a pending application of one , serial No. , filed , for a similar invention.

That the subject-matter of said interference as set forth in the official declaration was as follows: [*here state the issues of the interference*].

That thereafter, to wit, on the day of , 19 , the case having been submitted upon the preliminary statements and evidence presented by the parties thereto, the examiner of interferences rendered a decision awarding priority of invention to .

That, pursuant to the statutes and the rules of practice in the patent office in such case made and provided, appealed from the said adverse decision of the examiner of interference to the board of examiners-in-chief, and the case having been argued and submitted to said board, a decision was rendered by said board on the day of , 19 , affirming [*or, reversing*] the decision of the examiner of interferences.

That thereafter, pursuant to said statutes and rules, appealed from the said adverse decision of the board of examiners-in-chief to the commissioner of patents, and the same coming on to be heard, and having been argued and submitted, a decision was, on the day of , 19 , rendered by the commissioner adverse to your petitioner, affirming [*or, reversing*] the decision of the board of examiners-in-chief and awarding priority of invention to the said .

That on the day of , 19 , your petitioner, pursuant to §§ 4912 and 4913, R. S. U. S., gave notice to the commissioner of patents of his ap-

peal to this honorable court from his decision awarding priority of invention to said , as aforesaid, and filed with him, in writing, the following reasons of appeal: [*here insert reasons of appeal assigned in notice to commissioner*].

That the commissioner of patents has furnished your petitioner a certified transcript of the record and proceedings relating to said interference case, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore, your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the commissioner, as aforesaid, and that said appeal may be determined and the decision of the commissioner be revised and reversed, that justice may be done in the premises.

[*To be signed here by a member of the bar* By ,
of the court of appeals of D. C. *His Attorney.*
Solicitor and of counsel.

II. GENERAL FORMS.

1503. Agreement for Manufacture and Sale of Patented Article.

THIS AGREEMENT, made the day of , 19 , between P. D., of , in the state of , party of the first part, and J. L., of the city, county, and state of , party of the second part, in consideration of the sum of dollars, to each in hand paid, the receipt whereof is hereby acknowledged:

WHEREAS, the said party of the first part has heretofore obtained letters patent of the United States, for a certain new and useful improvement in rowlocks, by letters patent issued , , and numbered No. ; and,

WHEREAS, the party of the second part desires to make and sell the said rowlocks and to have the exclusive right so to do:

Now, THIS INDENTURE WITNESSETH: First. The said party of the first part hereby gives to the said party of the second part the sole and exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof, during the full and complete term of the said patent, and any extensions or re-issues thereof, subject, however, to the conditions hereinafter stated.

Second. The party of the second part agrees to use his best efforts to introduce into general and public use, and make known, and sell and dispose of such improved rowlocks, and that he will keep the general market duly supplied with them from time to time, according to the demand for them.

Third. The party of the second part agrees to pay to the said party of the first part for each pair of such improved rowlocks which he shall manufacture or cause or permit to be manufactured, either by himself or his agents, assigns, or licensees, the sum of , in the lawful money of the United States, as a license fee or royalty upon each and every pair of the said row-

locks so manufactured by him or his agents, assigns, or licensees; the whole of said license fee for each semi-annual term, as hereinafter specified, to be due and payable within days after the first days of and in each year. And the said party of the second part further agrees that he will, on the days of and in each year, account to the party of the first part for all and any royalty or license fee as aforesaid, that may be due from any agent, assign, or licensee of the said party of the second part.

Fourth. The said party of the second part agrees that he will keep, or cause to be kept, books of account in which full and complete entries shall be made of all the said rowlocks manufactured or sold by the said party of the second part, his agents and assigns or licensees; and that the said books shall, at all reasonable times, be open to the inspection of the said party of the first part, or his attorney duly appointed in writing; and that the said party of the first part, or his said attorney, shall have the right to examine any and all the books of account of the said party of the second part, containing any items, charges, memoranda, or information relating to the manufacture or sale of the said rowlocks. And that the said party of the second part will make and transmit to the said party of the first part, full and true returns on the days of and , in each year, of all the said rowlocks manufactured and sold by him, his agents, assigns, or licensees.

Fifth. The said party of the second part also agrees to supply the said party of the first part at the usual wholesale price at the store of the party of the second part, with such of said rowlocks as he may require.

Sixth. And the said party of the first part hereby covenants and agrees to and with the said party of the second part, that he will not manufacture, or cause to be manufactured, any of the said improved rowlocks, and that in case of the violation or infringement of the patent herein, or whenever the legal counsel of the said party of the second part shall advise him that a re-issue or extension of letters patent is lawful and desirable, or that any steps are necessary for the purpose of protecting the said patent from infringement or otherwise, he will sign all papers, take all rightful oaths, and do all acts necessary or convenient to the procurement of such re-issue or extension, or the protection of said rights, without charge to the said party of the second part, but at the cost and expense of the party of the second part. It is also further agreed between the parties hereto, if the said party of the second part shall desire to obtain patents covering the said improvements in any other country than the United States, that said party of the first part will sign all papers, take all rightful oaths, and do all acts necessary or convenient to the procurement of such patent without charge to the said party of the first part, but at the cost and expense of said party of the second part; it being agreed, however, that the said party of the first part shall be entitled to the royalty herein reserved, upon each and every pair of the said rowlocks that may be manufactured by the said party of the second part, his agents, assigns, or licensees under any of the last hereinbefore mentioned patents.

Seventh. Upon the failure of the said party of the second part to comply

with the conditions of this license, or either of them, the said party of the first part at his option may terminate the license after day's written notice of his intention so to do given to the said party of the second part, who shall have the said time for the fulfillment of the condition or conditions; such termination, however, shall not release the party of the second part from any liability due at such time to the said party of the first part.

Eighth. In case of the death of the said party of the first part, the said party of the second part agrees to make all the payments and accord all the rights that would otherwise have been due to the said party of the first part, to D. D., brother of the said party of the first part; and the said party of the first part hereby covenants with the said party of the second part that such payment to the said D. D., under the provisions of this paragraph, shall be a full and complete discharge to the said party of the second part of the conditions in that behalf made herein.

Ninth. And the said party of the first part covenants with the said party of the second part that he has full right to make the said license in manner and form as above written, and that the patent is free from all prior assignment, grant, mortgage, or other incumbrance whatsoever.

Tenth. This agreement shall bind the personal representatives and assigns of the said parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above written. •[Signature and seals.]

In presence of [two witnesses].

See also Forms Nos. 682, 721, 722, 723.

CHAPTER XLVIII.

PENSIONS.

THE subject of pensions is regulated by the provisions of the U. S. R. S. and the acts of congress. Forms and instructions prepared and published by the commissioner of pensions, may be had on application to him. The pamphlet containing them also has laws of the United States relating to pensions. Pension claims are usually prosecuted through a claim agent or pension attorney, whose fee cannot exceed ten dollars, unless an agreement fixing a higher fee, not, however, to exceed twenty-five dollars, is filed with the commissioner.

An honorably discharged soldier or sailor, sixty-two years of age or over, who served ninety days during the civil war or sixty days in the Mexican war, shall, upon proof of such facts, be placed upon the pension roll and receive twelve dollars per month, if sixty-two years of age, fifteen dollars per month, if seventy years of age, and twenty dollars per month, if seventy-five years of age, such pension to commence from the date of the filing of the application. No pension attorney, claim agent, or other person shall receive any fee for services in presenting such a claim or securing such a pension.

Widows, minor children under sixteen years of age, and helpless minors, now on the roll or hereafter to be placed on the pension roll, shall receive twelve dollars per month from April 19, 1908, and the allowance of two dollars per

month for each child under the age of sixteen years and for each helpless child shall not be affected. No claim agent or attorney shall be recognized in the adjudication of these claims.

A widow of an honorably discharged soldier or sailor who served ninety days during the civil war, shall, upon proof of his death, without proving it to be the result of his army or navy service, be placed on the pension roll from the date of the filing of the application, at the rate of twelve dollars per month during her widowhood, provided she married said soldier or sailor prior to June 27, 1890. The benefits of these provisions include those widows whose husbands, if living, would, on account of any disability have a pensionable status by reason of having served ninety days in the military or naval service of the United States during the civil war and having been honorably discharged, not having enlisted after January 1, 1865, after a prior Confederate service. No claim agent, attorney, or other person shall contract for, demand, receive or retain a greater sum than ten dollars for services in preparing, presenting, or prosecuting such a claim.

Any widow of a revolutionary soldier who served for fourteen days or was in any engagement shall, if not remarried, receive eight dollars per month from March 9, 1878, and twelve dollars per month from March 19, 1836.

A widow of a revolutionary soldier to whom a pension has been granted in his lifetime, shall, upon proof of her marriage to him and present widowhood, be placed upon the pension-roll at the rate he received during his life-time.

An honorably discharged soldier or sailor who served sixty days during the war of 1812, or a soldier or sailor who was personally named in a resolution of Congress for any specific service in that war, shall receive eight dollars per month from February 14, 1871, but not if he voluntarily engaged in, or aided or abetted, the rebellion against the United States; and his widow shall receive a pension at the same rate, if married to him prior to the treaty of peace which terminated the war of 1812.

An honorably discharged soldier or sailor who served fourteen days during the war of 1812 or was in any engagement, and his widow, shall receive eight dollars per month from February 14, 1871, and his widow twelve dollars per month from March 19, 1886, if married to him prior to that date.

By act of congress of March 19, 1886, the rate of pensions for widows, minor children, and dependent relatives was increased to twelve dollars per month from that date, and the allowance of two dollars per month for each child under the age of sixteen years was not affected; but the act applied only to widows married to the deceased soldier or sailor prior to its passage or married thereafter prior to or during the service of the soldier or sailor. No claim agent or attorney shall be recognized in the adjudication of claims under this act, nor be entitled to any compensation for services in making applications thereunder.

An honorably discharged soldier or sailor who served thirty days in the Black Hawk war, the Creek war, the Cherokee disturbances, or the Florida war with the Seminole Indians, or a soldier or sailor who was personally named in any resolution of congress for any specific service in said wars, and his widow, if not remarried, shall receive eight dollars per month from July 27, 1892. These wars embrace a period from 1832 to 1842, inclusive.

An honorably discharged soldier or sailor who served thirty days in the Florida and Georgia Seminole Indian war of 1817 and 1818, the Fevre River Indian war of Illinois of 1827, the Sac and Fox Indian war of 1831, the Sabine Indian disturbance of 1836 and 1837, the Cayuse Indian war of 1847 and 1848, on the Pacific coast, the Florida wars with the Seminole Indians from 1842 to 1858, inclusive, the Texas and New Mexico Indian war of 1849 to 1856, the California Indian disturbance of 1851 and 1852, the Utah Indian disturbance of 1850 to 1853, inclusive, and the Oregon and Washington Territory Indian war from 1851 to 1856, inclusive, and his widow, if not remarried, shall receive eight dollars per month from June 27, 1902.

The surviving officers and enlisted men of the Texas volunteers who served in the defense of the frontier of that state against Mexican marauders and

Indian depredations from 1855 to 1860, inclusive, and their widows, shall receive eight dollars per month from May 30, 1908.

An honorably discharged soldier or sailor who served sixty days in Mexico, or on the coasts or frontier thereof, or enroute thereto, in the Mexican war, or was in battle, or a soldier or sailor who was personally named in any resolution of congress for any specific service in said war, and his widow, if not remarried, shall be entitled to eight dollars per month from January 29, 1887, if sixty-two years of age, or, if not, upon proof of any disability or dependency equivalent to some cause prescribed or recognized by the pension laws of the United States as a sufficient reason for the allowance of a pension, but this shall not include any person who incurred such disability while voluntarily engaged in or aiding or abetting the late rebellion. On January 5, 1893, the rate for such soldier or sailor then on the pension roll was increased to twelve dollars per month, if wholly disabled for manual labor and in such destitute circumstances that eight dollars per month is insufficient to provide him with necessaries of life. On April 23, 1900, the rate was made twelve dollars per month for every survivor of the Mexican war pensionable under then existing Mexican war service pension laws, if so disabled or in such destitute circumstances.

On March 3, 1903, the rate was made twelve dollars a month for all survivors of the Mexican war then on the pension-roll or thereafter placed on it.

No pension shall be granted to a widow for the same time that her husband received one.

A soldier or person in the naval service, disabled by wounds or otherwise while in the service of the United States, is entitled to a pension; but an engineer, fireman, or coal-heaver shall not be entitled to a pension by reason of a disability incurred prior to August 31, 1842.

The widow and children under sixteen years of age^o of a soldier who served prior to March 4, 1861, are entitled to a pension, if he died of an injury received or disease contracted in the service of the United States and in the line of duty.

Besides pensions, bounty lands are also awarded for service in the United States army or navy. Service, to give title to bounty land, must have been for at least fourteen days, or in a battle prior to March 3, 1855, and in the navy or regular army, must have been in some war in which the United States Government was engaged.

In the pamphlet sent by the commissioner of pensions a table of rates is given of pensions allowed for disabilities incurred in the military or naval service, and in line of duty.

CHAPTER XLIX.

POWERS OF ATTORNEY.

A POWER OF ATTORNEY is a written delegation of authority, by which one person enables another to do an act for him.

An agent acting under a power of attorney is usually termed an *attorney in fact*, by way of distinction from an *attorney-at-law*.

No one can appoint an attorney in fact who is not legally capable of acting for himself. Not only all persons who are capable of acting for themselves, but even some who are disqualified from acting in their own capacity, if they have sufficient understanding, as minors of a discreet age, may act as attorneys in fact for others. The authority given is termed either general or special; according as it extends to the transaction of all the business of the constituents or grantors of the power, or is confined to doing some special act or business particularly named in the letter of attorney.

Where a power is special, and the authority limited, the attorney cannot bind his principal by any act in which he exceeds that authority. The authority of the attorney is to be strictly construed; though it is to be taken to include all necessary means of executing it with effect.

Hence a party dealing with the attorney in fact of another should look to the terms of the power to see that the authority given is sufficiently broad.

If the power prescribes any condition in its execution, such as for instance the consent of a third person, it must be strictly pursued.

Where a power is vested in several persons, jointly, all should unite in executing it. It is provided, however, by statute in New York, in the case of powers relating to lands, that after the death of one or more of such persons the power may be executed by the survivors.¹

A power is said to be coupled with an interest when the attorney has, by virtue of it, or of the instrument containing it or otherwise, a present or future beneficial interest in the subject-matter. A naked authority may be revoked at any time by the person who gave it, and expires with his life; but a power coupled with an interest is not revoked by the death of the grantor, nor is it revocable at his pleasure. A power of attorney which forms part of a contract, and is security for money, or for the performance of any act which is considered valuable, is regarded as coupled with an interest, and is irrevocable.

One acting under a power giving only a delegated discretionary authority cannot give to another person a general authority to execute the same, unless he is specially authorized to do so by the instrument creating the power. Thus, if a trustee have a power to sell lands, he cannot give a general authority to an agent to sell and convey, or to contract absolutely for a sale; though he may empower the agent to contract, subject to his ratification, and to convey after ratification; but the better practice is for the trustee to execute the conveyance himself. So an attorney, acting under a power, cannot delegate his authority or appoint a substitute, unless the power expressly gives authority to do so.

A revocation of a power takes effect, as to the agent, from the time that it is communicated to him, and, as to third persons, from the time that it is made known to them; but, as respects third persons, the question of notice depends in each case upon its own peculiar circumstances.

The death of an attorney authorized to appoint an attorney under him, and to revoke such appointment at his pleasure, necessarily revokes the power of a substitute so appointed.

Powers of attorney are usually under seal. If the power is to convey land or do any other act requiring the execution of an instrument under seal, the power must be executed and attested with the same formalities which the law requires in the execution of the principal instrument, such as acknowledgment, record, etc.

The attorney, in a simple power of attorney, must act, not in his own name, but in the name of his constituent; and hence, if it is to execute a deed, the constituent, not the attorney, should be named as the grantor; and the attorney should sign the constituent's name, adding his own — thus, A. B. by C. D., his attorney.

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1504. Short Form.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the town of _____, in the county of _____, and state of _____, do hereby make, constitute and appoint Y. Z., of the town of _____, in the county of _____, and state of _____, my true and lawful attorney, for me and in my name * to [here state subject-matter of power; see forms below], and to do and perform all necessary acts in the execution and prosecution of the aforesaid business in as full and ample a manner as I might do if I were personally present.

IN WITNESS [etc., as in following form].

1505. General Form, with Power of Substitution and Revocation.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, in the county of _____, and state of _____, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Y. Z., of _____, my true and lawful attorney, for me, and in my name, place, and stead, and to my use* [here state the subject-matter of the power; see forms below], giving † my said attorney full power to do everything whatsoever, requisite and necessary to be done in the premises, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney, or his substitute, shall lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the _____ day of _____, in the year one thousand nine hundred and _____.

Signed, sealed, and delivered in presence of _____ [Signature of constituent.]
 _____ [Signature of witness.]

1506. Power of Attorney to Collect Debts.

[As in either preceding form, inserting at the * as follows:] to ask, demand, sue for, collect, receive, and give acquittance for all sums of money, debts, accounts, and other demands whatsoever, which are, or shall become due, owing, and payable to me, or detained from me by C. D., of _____, his heirs,

executors, and administrators, or any of them [*or, by any person or persons residing or being in*], and upon the receipt thereof, receipts, acquittances, or other sufficient discharges for me and in my name to make, seal, and deliver.

1507. Power to Collect Rents.

[*As in Form 1504 or 1505, inserting at the * the following:*] to ask, demand, collect, and receive, all such rents, and arrears of rent, as now are or may hereafter be due, or owing to me from , of , or any of them, as tenants or occupiers of any lands, tenements, or hereditaments, belonging to or claimed by me situate in , in the state of , or which may be due from, or payable by any other person or persons whomsoever, as tenants, occupiers, lessees, or assignees of any term or terms, of such lands, tenements, or hereditaments, or any part of them; and upon receipt thereof, to give proper acquittances and discharges thereof; and, in default of payment of said rent, or any part thereof, to proceed by suit or suits at law for the recovery thereof, as he, my said attorney, shall deem fit.

1508. Power to Receive Dividends, Etc.

[*As in Form 1504 or 1505, inserting at the * the following:*] to receive the dividends which are or shall be payable, on all stock standing in my name on the books of the treasury of the United States [*or, on the books of the Bank of*], *as the case may be*, and give receipt therefor.

1509. Power to Receive a Legacy.

KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, M. N., late of , deceased, by his last will and testament did give and bequeath unto me, A. B., of , a legacy of dollars, to be paid unto me on , of which said will, E. F., of , and G. H., of , are joint executors, as by the said will appears:

Now KNOW YE, that I, the said A. B., have made, constituted, and appointed, and by these presents do make, constitute, and appoint Y. Z., of , my true and lawful attorney, for me and in my name, and for my use and benefit, to ask, demand, and receive, of and from the said E. F. and G. H., the legacy given and bequeathed unto me, the said A. B., by the said will of the said M. N., as aforesaid; and upon receipt thereof by, or payment thereof to my said attorney, to give a general release or discharge for the same; giving [*continue as in Form 1505 from the † to the end*].

1510. Power to Transfer Stock.

[*As in Form 1504 to 1505, inserting at the * the following:*] to sell, assign, transfer, and set over, all and any stock [*or, shares of stock*], of the

Company, standing in my name on the books of the said company, and for that purpose to make and execute all necessary acts of assignment and transfer, and to substitute one or more persons with like power, hereby ratifying and affirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

1511. Power to Sign Firm Name and Act as Firm's Attorney in Fact.

KNOW ALL MEN BY THESE PRESENTS, that we , have made, constituted, and appointed by these presents our true and lawful attorney for us

and in our name, place, and stead, in transacting any business, directly or indirectly, with any bank or corporation, their officers or agents, or with any other person or persons, to sign, indorse, draw, accept, make, execute, and deliver all such notes, checks, bills of exchange, and other contracts or instruments in writing with or without seal, and also to sign our firm name as attorney to any transfer of any stocks, bonds, or other securities whatsoever, or agreements or papers or paper writings in any way connected with our said business, and to make such verbal contracts as he may deem proper, and to do any act or acts or make any contract or contracts, either verbal or in writing, or sign any paper or papers in any way connected with our said business, or in which it shall be necessary to sign the name of our said firm; it being intended to give and hereby giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we or any member of our said firm might or could do if personally present; hereby ratifying and confirming all that our said attorney shall lawfully do or cause to be done by virtue hereof; and any such notes, checks, bills of exchange, contracts, or instruments, stocks, bonds, or securities, or other paper of whatsoever nature, signed, indorsed, drawn, accepted, made, transferred, executed, or delivered by our said attorney, shall bind, and are hereby ratified and confirmed by the undersigned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day of _____, in the year one thousand nine hundred and _____.

Sealed and delivered in the presence of _____ [Signatures and seals.]

1512. Power to Sell Vessel.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B. (½ths), and C. D. (¼ths), owners of bark Mary, of _____, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Y. Z., of _____, our true and lawful attorney for us, and in our names, places, and stead, to sell, convey, and transfer our, and each of our aforesaid interests in said bark Mary, her tackle, apparel, and furniture, to any person or persons, and for such sum or sums of money as he may deem proper, and to execute and deliver to the purchaser, in our and each of our names, good and sufficient bill or bills of sale, or other instrument of conveyance therefor, and to receive the purchase money therefor, to our use, giving [continue as in Form 1505 from the † to the end].

1513. Power to Manage Real Property.

[As in Form 1504 or 1505, inserting at the * the following.] to exercise the general control and supervision over all my lands, tenements, and hereditaments, in the county of _____; to prevent, by all lawful means, the commission of any trespass or waste, or other injury thereupon; and, at my expense, and under the advice of my counsel, M. N., Esq., of _____ [or such other counsel as my said attorney may employ], to sue for protection against any such injury, and to collect, recover, and receive, and compound for, any damages which may accrue by means of the commission of any trespass or waste upon the said lands, tenements, and hereditaments, or any part thereof, by any person whomsoever.

1514. Power to Sell and Convey Land.

[As in Form 1504 or 1505, inserting at the * the following:] To grant, bargain and sell¹ , or any part thereof, for such price, and on such terms, as to him shall seem meet,² and for me, and in my name, to make, execute, acknowledge, and deliver, good and sufficient deeds and conveyances for the same, either with or without covenants and warranty.³

1515. Power to Mortgage Lands.⁴

[As in Form 1504 or 1505, inserting at the * the following:] to borrow upon the security of my , in , a sum or sums not exceeding dollars, and to sign, seal, and deliver a bond or bonds for the payment of such sums [here state terms of payment, if the attorney is to be limited in this respect], and to sign, seal, and deliver, as collateral thereto, a mortgage or mortgages upon said estate, with the usual power of sale, and interest and insurance clauses, and other usual provisions and covenants.

1516. Power to Renew Lease and Sell the Term.

[As in Form 1504 or 1505, inserting at the * the following:] to renew or agree for a renewal of the lease, by which I hold the lot whereon stands my house, known as No. , in street, in city, to lease said house, or to sell and convey said house for cash, or in part for a purchase-money mortgage, and in case of such sale to assign the lease whereby I hold or may then hold the lot whereon said house stands.

1517. Power to Make Partition.

[As in Form 1504 or 1505, inserting at the * the following:] to make partition and division with the other heirs of my late father, deceased, of his real estate [or, of his estate, both real and personal], and to accept and receive my share of his personal estate; and, upon any partition or division, to enter upon and take possession of any lands, tenements, or hereditaments, which may be set off to me as my share of the real estate aforesaid; and to enter into any covenant or agreement respecting my share [and the shares of the other heirs] of his estate [real or personal], which my said attorney shall think reasonable and for my interest; and, in my name and for my use, to demand, sue for, and take possession of, all and singular, the lands, tenements, and hereditaments, sum and sums of money, goods, and chattels, withheld from me, to which I am entitled, and which I may lawfully claim from the heirs, executors, or administrators of my said father, or any other person or persons whatsoever.

¹ A power to sell and convey does not in itself confer a power to mortgage. There is a substantial difference between raising money by mortgage and sale; and a power to raise it by one of these methods merely, puts a negative on the other.

² A power to sell land for a certain sum means for ready money, where there is nothing in the power, or in the usage of trade to manifest a different intention.

³ A power to sell, and on such sale to execute in the name of the principal, such

conveyances and assurances in the law of the premises as needful or necessary according to the judgment of the attorney, does not authorize the attorney to execute a deed with covenants so as to bind the principal.

⁴ A power to mortgage is not implied in an ordinary power to sell. It should be expressed. A power to mortgage implies a power to authorize the mortgagee to sell in default of payment, for the power to sell is one of the customary and lawful remedies of the mortgagee recognized by statute.

1518. Power to Effect Insurance.

[As in Form 1504 or 1505, inserting at the * the following:] to effect insurance on [here briefly designate the property to be insured], with the Insurance Company, in the city of , on such terms as to my said attorney shall seem meet and proper; to sign any application for said insurance, any representation of the condition and value of said property, articles of agreement, promissory, or premium note, and all other papers that may be necessary for that purpose; and also to cancel and surrender any policy he may obtain, and on such canceling, or the expiration thereof, to receive any dividend, return premium, or deposit that may be due, and on such receipt full discharge to give therefor.

1519. Power to Carry on Business.

[As in Form 1504 or 1505, inserting at the * the following:] to conduct and carry on the business of a merchant tailor at ; to buy and sell , to receive on commission and to manufacture , and all goods and merchandise, appertaining to said business, as he may deem proper; to make and execute, sign, seal, and deliver, for me and in my name, all bills, bonds, notes, specialties, or other instruments in writing whatsoever, which shall be necessary to the proper conducting of the said business.¹

1520. Another Form.

[As in Form 1504 or 1505, inserting at the * the following:] to take charge of my business as manufacturer and vendor of medicines; to purchase and sell, either for cash or on credit, all such articles and property as he may deem useful and proper as connected with said business; sign, accept, and indorse notes, drafts, and bills; to state accounts; to sue and prosecute, collect, compromise, or settle all claims or demands due or to become due, now existing or hereafter to arise in my favor, and to adjust, settle, and pay all claims and demands which now exist against me or may hereafter arise, either as connected with the foregoing business or otherwise; to take the general management and control of my affairs, property, and business, and therein to buy, sell, pledge, or mortgage, and to execute and enter into bonds, contracts, mortgages, and deeds connected therewith, and in general do all other acts and things which he may consider useful or necessary connected with my business, property, and interests.

1521. The Same; A Fuller Form.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of the city of , being about to depart from the said city temporarily, and about to proceed to Europe, have made, nominated, constituted, and appointed in my place and stead, and by these presents do, make, nominate, constitute, and appoint, and in my place and stead put, Y. Z., of the city of , my true and lawful attorney, for me and in my name, place, and stead, and to my use, during my said absence from the said city, to ask, demand, sue for, levy, require, recover, and receive, all and all manner of goods, chattels, debts, duties, rents, sum and

¹This power is often given in broader terms. A power of attorney given by a merchant "generally to conduct in my place and stead my commercial business, and to sign my name whenever requisite or expedient in the transaction and conduct of such business as to my said attorney shall seem meet in his good discretion," authorizes drawing bills on drawees who had no effects of the principal. *Dolus v. Frosch*, 1 Den. 367.

sums of money and demands whatsoever due, or hereafter to become due and owing, or belonging unto me, on account of the business now carried on by me in the said city of _____, as _____, or for or on any other account whatsoever by any person or persons whomsoever, and upon the receipt thereof, or of any part or parts thereof, to make, give, and execute acquittances, receipts, releases, or other discharges for the same, whether under seal or otherwise, and to give, execute, and deliver, in my own name, or in the name of my said attorney, all checks, acknowledgments, agreements, and all other instruments in writing of whatever nature, as to my said attorney may seem meet for carrying on the said business; to enter into, and take possession of any lands, tenements, or hereditaments of mine that may be unoccupied or become vacant, or to the possession of which I may be or become entitled, and all and every the real estate of me, the said A. B., and for me and in my name and to my use, to receive and take all or any rents, issues, and profits of all or any such lands, tenements, hereditaments, or any of them, and to let the same in such manner as my said attorney shall think proper, and from time to time renew leases, but not for a period extending beyond the _____ day of _____, in the year one thousand eight hundred and _____, and also all deeds, leases, agreements, and writings in that behalf requisite and necessary for me and in my name, to make, seal, and deliver as my acts and deeds, and for me, and in my name, to take any ejectment or other judicial proceeding, and make, or cause to be made, any avowries or cognizances, and for me, and in my name, to commence and prosecute any suits, or actions, or other legal proceedings, for any goods, chattels, debts, duties, demands, matter, cause, or thing, whatsoever, due or belonging, or to be due and belonging unto me, or to be demanded, or that may be demanded by me in any court of law or equity, or elsewhere; and the same to prosecute and follow, or to discontinue the same, or become nonsuit therein, if he shall see cause, and also to make an end, composition, or agreement of and for such goods, chattels, debts, duties, demands, matter, cause, or thing, or any part thereof; and also for me and in my name to commence, carry on, institute, or prosecute any proceeding, civil or criminal, or any other way howsoever, for the infringement of my rights as the proprietor of _____, and for the punishment of any person or persons for the infringement thereof, or the imitating, counterfeiting, or selling as real, spurious imitations of the said _____, or of the labels or bills used in the said trade or business; and also for me and in my name, to use and take all such courses, remedies, and carry on and conduct the said trade or business, and for the recovering, receiving, obtaining, and getting any lands, tenements, rents, hereditaments, goods and chattels, debts, demands, duties, sum and sums of money, or other things whatsoever, that is, are, or shall be, or by my said attorney shall be conceived or thought to be unto me belonging, appertaining, due, owing, or payable in my own right or otherwise howsoever, as I myself might use or take if I were present in person; and also for me and in my name to appear, make answer, and defend in all actions and suits whatsoever, as well real as personal or mixed, which are, or hereafter shall be, commenced against me, by any person whatsoever; and also for me and in my name to settle and adjust with each

1 If the lease exceeds the term restricted by the power, it is void at law. And where, under a power to lease for a number of years, a second lease is made to commence after the expiration of a subsisting term, the residue of the existing term and the future term must not together exceed the power; if they do, the lease is utterly void at law. *Sinclair v. Jackson*, 8 Cow. 543.

and every person or persons all accounts, dues, and demands, subsisting or to subsist between them, any or either of them, and me, and to compound, arbitrate, and agree to the same in such manner as my said attorney shall think proper; and also for me and in my name, place, and stead, to engage, hire, and employ all and all kinds of workmen, clerks, assistants, and servants, for the better and more effectually enabling my said attorney to conduct and carry on the said trade and business, and to discharge any or all of such workmen, clerks, assistants, or servants now employed, engaged, or retained in the said trade or business; and for the better doing, acting, performing, or executing of all or any of the premises, I do hereby further give unto my said attorney full power and authority to constitute, appoint, authorize, and in his place and stead put and substitute one or more attorney or attorneys for me, and as my attorney or attorneys, or the same, at his pleasure, again to revoke, and other or others in his or their place to substitute and appoint, and to do, execute, perform, and finish for me, and in my name, all and singular those things which shall be expedient and necessary, or which my said attorney shall judge expedient and necessary in and about, for, touching, or concerning the premises, or any of them, as thoroughly, amply, and fully as I, the said A. B., could do concerning the same, being personally present; and whatever my said attorney or his substitute shall do, or cause to be done, in, about, or concerning the premises, and any part thereof, I hereby ratify and confirm.

IN WITNESS [*etc.*, as in Form 1505].

1522. Power to Collect Army or Navy Claim.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Y. Z., of _____, my true and lawful attorney, for me and in my name, place, and stead, to prosecute my claim to _____, filed in the _____ office at Washington, D. C., under the act of _____, and also to _____, and hereby revoking all other powers of attorney, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney, or his substitute, shall lawfully do, or cause to be done, by virtue hereof.

And I hereby certify that my former attorney has no claim on me for fees or advances of any kind whatever, on account of the claim herewith transferred to the aforesaid attorney.

IN WITNESS [*etc.*, as in Form 1505].

1523. General Custom-house Power.

[As in Form 1505 to the *, continuing thus:] to receive and enter at the custom-house of the district of _____, any goods, wares, or merchandise imported by me, or which may hereafter arrive, consigned to me, to sign my name to, seal, and deliver for me and as my act and deed, any bond or bonds which may be required by the collector of the said district, for securing the duties on any such goods, wares, or merchandise: Also, to sign my name to, seal, and deliver for me, and as my act and deed, any bond or bonds requisite for obtaining the debenture on any goods, wares, or merchandise, when ex-

ported, and generally to transact all business at the said custom-house, in which I am, or may hereafter be, interested or concerned, as fully as I could if personally present. And I hereby declare, that all bonds signed and executed by my said attorney shall be as obligatory on me as those signed by myself, and this power shall remain in full force until revoked by written notice given to said collector.

IN WITNESS [etc., as in Form 1505].

1524. Special Custom-house Power.

[As in Form 1505 to the *, continuing thus:] to receive and enter at the custom-house of the district of , any goods, wares, or merchandise imported by, or consigned to me, in the [here name vessel]. And for me, and in my name and stead to sign, seal, execute, and deliver all and every bond and bonds which may be required to secure the duties thereon, or for the transportation or exportation of the same; or any other bond or bonds required by the revenue laws or the regulations of the treasury department of the United States, or the collector of the customs of the district of , relative to any such merchandise; or which may be necessary to obtain the debenture and debentures upon such of the said goods, wares, and merchandise as may be exported for me or on my account. To have, take, and receive all debenture certificates to be issued thereupon for me and in my name, to indorse, assign, and transfer the same; or have, take, and receive the moneys due and to grow due thereon: And generally, as my attorney to do, transact, and perform all custom-house business, of what kind soever, in which I am or may be interested or concerned, as fully and effectually, to all intents and purposes, as I, if present there in person, could do; also, to set my seal to any instrument which may be necessary in the premises, and the same to acknowledge for me to be my deed; and generally to do and perform all things relating to the premises, which I could lawfully do if personally present, and as fully and effectually to every intent and purpose, although the same should seem to require more precise or special authority than is herein expressed. And especially authorizing and empowering my said attorney, for me and in my name and stead, to sign, seal, execute, and deliver all bonds of indemnity and other specialties, and also all other documents which may be necessary for effecting the premises; hereby ratifying all and whatsoever my said attorney may lawfully do by virtue hereof.

And I hereby further authorize my said attorney at any time, and from time to time at his discretion, by proper letters of attorney, to substitute any other person or persons for himself in my place, and the same at his pleasure to revoke; hereby giving to the substitute or substitutes as full power and authority in the premises as is hereby given to my said attorney. And also hereby ratifying and confirming all and every act, matter, and thing that my said attorney or his substitute or substitutes may do in the premises, by virtue of these presents.

And it is hereby declared and understood, that this power shall be and remain in full force and virtue until revoked by written notice given to the collector.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of , .

Signed, sealed, and delivered in presence of [Signature and seal.]

1525. Confirmation of Attorney's Act.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS misapprehension has arisen as to the power and authority of Y. Z., of _____, in my name and behalf, to execute a certain agreement between M. N., of the one part, and myself of the other part; and,

WHEREAS, said agreement has been signed and sealed by the said Y. Z., as my lawful attorney, and the said M. N., respectively:

NOW, THESE PRESENTS WITNESS, that I, A. B., of _____, have examined and read said articles of agreement, and that I do hereby ratify and confirm the same, and do declare that the said Y. Z., who did, as my lawful attorney, in my name and behalf, sign and seal the same, did so sign and seal the same by my authority and with my consent; and I do now fully ratify and confirm all his acts and doings, in and about the same, in as full a manner as if I, myself, had signed and sealed the same.

IN WITNESS [*etc., as in Form 1505*].

1526. Power to Several, to Act Together, or Either One Separately.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the city of _____, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, W. X. and Y. Z., jointly, and each of them severally, my true and lawful attorney and attorneys, for me and in my name, place, and stead, and to my use, [*here set forth the subject of the power, and continue as in other cases, saying, attorneys, or either of them, instead of the word, attorney, wherever it occurs afterwards*].

1527. Power to Several Jointly.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the city of _____, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, W. X. and Y. Z., jointly, my true and lawful attorneys for me [*etc., as in other cases, saying, attorneys, instead of attorney, wherever afterwards mentioned.*]

1528. A Power of Attorney to Two Persons, But in Case of the Death, Absence, or Refusal of Both or Either, Then to Another, Alone, or With Either of Them that Will Act.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the city of _____, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, W. X. and Y. Z., jointly, and each of them severally, my true and lawful attorney and attorneys; and in case of the decease or absence of the said W. X. and Y. Z., or either of them, or the refusal of them, or either of them, to act as my attorneys by virtue hereof, then I make U. V. alone, or together with him or them, the said W. X. and Y. Z., who shall be living and present, and will act as my attorney by virtue of these presents, jointly, or either of them severally, my true [*etc., as in other cases, saying, attorneys or either of them, instead of attorney, wherever afterwards mentioned.*]

1529. Substitution of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that I, Y. Z., by virtue of the power and authority to me given, in and by the letter of attorney of A. B., of _____, which is hereunto annexed, do make, substitute, and appoint M. N., of _____, as well for me as the true and lawful attorney and substitute of the said

constituent named in the said letter of attorney, to do, execute, and perform all and everything requisite and necessary to be done, as fully, to all intents and purposes, as the said constituent or I could do if personally present; hereby ratifying and confirming all that the said attorney and substitute hereby made shall do in the premises by virtue hereof and of the said letter of attorney.

IN WITNESS [*etc., as in Form 1210*].

1530. Revocation of Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, I, A. B., in and by my letter of attorney, bearing date the day of , one thousand eight hundred and , did make, constitute, and appoint W. X., as by the aforesaid letter of attorney may more fully and at large appear:

Now, KNOW YE, that I, the said A. B., have revoked, countermanded, annulled, and made void, and by these presents do revoke, countermand, annul, and make void, the said letter of attorney above mentioned, and all power and authority thereby given, or intended to be given, to the said Y. Z.

IN WITNESS [*etc., as in Form 1210*].

1531. Power of Attorney to Convey Land in Mississippi.

(Prescribed by § 199 of the Annotated Code of Mississippi.)

KNOW ALL, that I, George Poindexter, of county, Mississippi, do hereby appoint Albert Brown, of county, my attorney in fact, with full power to sell and convey in fee simple with general warranty [*or, without warranty, as the case may be*], of title, that land situated in [*describe it*].

Witness my signature, the day of , A. D. .

GEO. POINDEXTER.

1532. Power of Attorney to Represent Party in Administration of Estate in Mississippi.

(Prescribed by § 200 of the Annotated Code of Mississippi.)

KNOW ALL, that I, C. C. Claiborne, of county, Mississippi, do hereby constitute Gerard C. Brandon, of county, in said state, my attorney in fact to represent me in the chancery court of said county of in all matters pertaining to the administration in said court of the estate of Phæbe Jones, in which I am interested as an heir and distributee, and I consent that all process issued from said court touching said estate may be executed on my said attorney.

WITNESS my signature, the day of , A. D. 19 .

G. C. CLAIBORNE.

1533. Power of Attorney to Collect Claim Against the Government.

KNOW ALL MEN BY THESE PRESENTS, that , in the county of , and state of , ha made, constituted and appointed, and by these presents do make, constitute and appoint true and lawful attorney, for and in name, place and stead, hereby annulling and revoking all former powers of attorney whatever in the premises, and making this power of attorney irrevocable, to prosecute, before any of the departments of the government, or the courts, or committees of congress of the United States, to a

termination and adjustment claim against the Government of the United States for [description of claim] hereby giving and granting to said attorney full power and authority to receive and receipt for, any draft or warrant or other evidence of indebtedness that may be issued in liquidation of said claim, or any part thereof, and to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN TESTIMONY WHEREOF, have hereunto set hand and seal this day of , nineteen hundred and .

[Signatures and seals.]

Signed and sealed in the presence of

[Signatures.]

1534. Power of Attorney to Enter and Survey Mining Lands.

KNOW ALL MEN BY THESE PRESENTS, That we, , and do hereby constitute and appoint as our attorney in fact, for us and in our names to make application to the United States for the entry and purchase of certain Government lands in mining district, county of known as the mining claim and premises; and to have the same surveyed, and to take any and all steps that may be necessary to procure from the government of the United States a patent to the said lands and premises, granting the same to us. And to do all other acts appertaining to the said survey and entry as aforesaid as we ourselves could do by our own act and in our own proper person.

IN WITNESS WHEREOF, We have hereunto set our hands and affixed our seals, the day of , 19 .

[Signatures and seals.]

CHAPTER L.

PRE-EMPTIONS AND HOMESTEADS.

THE right of pre-emption in public lands of the United States is granted and defined by the U. S. R. S., and provisions relating to homesteads are contained in the U. S. R. S., and generally the law relating to the above subject and public lands of the United States are to be found in the U. S. R. S., and acts of congress.

Suggestions of the general land office to homesteaders and persons desiring to make homestead entries are to be found in a pamphlet issued by the general land office, for gratuitous distribution. The pamphlet also contains provisions of the U. S. Revised Statutes and acts of congress upon the subject, with instructions and forms.

A separate pamphlet containing tables of vacant public lands in the United States is also issued by the general land office, which is in the department of the Interior.

CHAPTER LI.

PROMISSORY NOTES.

A **PROMISSORY NOTE** is a promise in writing to pay to a specified person a certain sum of money, and money only, without condition or contingency. A note payable to one or the other of two persons designated in the alternative, or payable out of a particular fund, or upon an uncertain event, or for payment of an unliquidated amount, or for performance of any other act, has not the qualities of a promissory note.

A negotiable note is one which is by its terms either payable to the order of any person, or to the bearer or holder of it, whoever he may be.

A sealed note is not barred by the Statute of Limitations until the lapse of twenty years; and an indorsement of a sealed note gives the holder nothing more than an equitable ownership, subject to all existing claims and defenses by the maker.

A note payable on demand is payable immediately, if the creditor choose to enforce it; and whether he make demand or not, the Statute of Limitations begins to run against it from its date; but he is not bound to make immediate demand in order to charge indorsers.

Where a note is to be on interest, it should be so specified in the note by inserting the words "with interest," or "with use," else the note will not draw interest except from maturity. Where the rate of interest is not specified in the note, and it is made payable with interest, if not made payable at a particular place, it draws the rate of interest fixed by law in the state in which it is made; but if it is made in one state to be paid in another, it draws interest at the rate in the state where it is made payable.

A note payable on demand, but not specifying interest, bears interest only from the time of demand.

Indorsement.— If the payee or holder of a note writes his name upon the back of it, and transfers it to another person, he becomes an indorser, and the person thus taking the note is termed the indorsee. An indorsee may in turn become indorser, by transferring it in the same way. The person who, at any given time, has the right to the note, is termed the holder.

An indorsement in blank is where the indorser writes his name only on the back of the note. An indorsement in full is where the person to whom the note is indorsed is named. Indorsement is an agreement to pay in default of payment by the maker, on the usual conditions of demand and notice. If the indorser wishes to transfer the note without making himself liable, he should write before his name the words "without recourse;" or, if he indorses merely as agent to transfer the nominal title, add the word "agent" to his signature.

For the law regulating this subject in New York, see the Negotiable Instruments Law (Birdseye, C. & G. Cons. Laws, 1909, pp. 3634–3703. See also chapter on **BILLS OF EXCHANGE.**)

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1535. Negotiable Promissory Note.

\$1,000.

NEW YORK, January 1,

Sixty days after date [or, on the day of , or, on demand], I promise [or, we promise, or, we jointly and severally promise] to pay to A. B. or order [or, to A. B. or bearer], one thousand dollars [with interest], for value received. [Signature of maker.]

1536. Non-negotiable Note.

\$1,000.

NEW YORK, January 1, ..

Sixty days after date [or otherwise, as above], I promise to pay to A. B., one thousand dollars, for value received [with interest].

[Signature of maker.]

[Indorsements as in forms on page 177.]

1537. Stock Note, Short Form.

\$

NEW YORK, , .

On , without grace, , promise to pay to , or order, dollars, for value received, at , with interest at the rate of per cent. per annum, having deposited with , as collateral security with authority to sell the same at private or public sale, on the non-performance of this promise, and without notice, and with the right of the holder or holders of this note to become purchasers at such sale: [Here describe collateral.]

In case of depreciation in the market value of the security hereby pledged, or which may hereafter be pledged for this loan, a payment is to be made on account, so that the said market value shall always be at least per cent. more than the amount unpaid of this note. In case of failure to do so, this note shall be deemed to be due and payable forthwith, anything hereinbefore expressed to the contrary notwithstanding, and the holder may immediately reimburse by sale of the security.

Due

1538. Collateral Note, or Stock Note.

\$

NEW YORK, , .

after date, for value received, promise to pay to the Bank in the city of New York, or order, at the banking-house of said Bank, in funds current at the New York Clearing House, dollars (with interest at the rate of per cent. per annum), having deposited or pledged herewith, as collateral security, with authority to sell at public or private sale, in the manner and on the terms hereinafter stated, on the non-performance of this promise, or any of its conditions, the following securities, viz.: [here state them.]

or residue of proceeds resulting after payment of this note, shall be applicable to any other note or liability or liabilities of to said trust company, due, or to become due, or that may be hereafter contracted, provided the said excess of collateral or residue of proceeds shall not be retained by the said trust company upon any such other note or liability upon which the value of the collaterals held by the said trust company amounts to the margin originally agreed upon as stated in the note, and in case of any exchange of, or addition to, the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

It is also understood that upon any sale of any of said collaterals said trust company may become the purchaser thereof and hold the same thereafter in its own right, absolutely free from any claim of . A margin of per cent. on the market value is to be maintained, the said trust company having the right to call for additional security should the same decline, and upon failure to respond, this note shall be deemed to be due and payable on demand.

GUARANTY TO BE INDORSED ON NOTE.

In consideration of the making, at my request, of the loan evidenced by the within note and of one dollar to me paid, I hereby guarantee to the Trust Company of the city of New York, its successors, indorsees, or assigns, the prompt payment of the said loan at maturity, and I hereby waive demand, protest, and notice of protest for non-payment of the within note, and consent to any extension of the time for payment of said loan without notice to me.

1540. Agreement to Take the Place of Stock or Collateral Note.

(Under act of Congress, approved June 13, 1898, Revenue Law of 1898.)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, in consideration of financial accommodations given, or to be given, or continued to the undersigned by the Trust Company of the city of New York, hereby agree with the Trust Company, that whenever the undersigned shall become or remain, directly or contingently, indebted to the Trust Company, for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any indorsement, draft, guarantee, or in any other manner whatsoever, or upon any other claim, the Trust Company shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise against the undersigned, or his or their executors, administrators, or assigns, namely:

1. All securities deposited by the undersigned with the Trust Company, as collateral to any such loan or indebtedness of the undersigned to the Trust Company, shall also be held by the Trust Company as security for any other liability of the undersigned to the Trust Company, whether then existing or thereafter contracted; and the Trust Company shall also have a lien upon any balance of the deposit account of the undersigned with the Trust Company existing from time to time, and upon all property of the undersigned of every description left with the Trust Company for safe-keeping or otherwise, or coming to the hands of the Trust Company in any way, as security for any liability of the undersigned to the Trust Company now existing or hereafter contracted.

2. The Trust Company shall at all times have the right to require from the undersigned that there shall be lodged with the Trust Company, as security for all existing liabilities of the undersigned to the Trust Com-

pany, approved collateral securities to an amount satisfactory to the Trust Company; and upon the failure of the undersigned at all times to keep a margin of securities with the Trust Company for such liabilities of the undersigned, satisfactory to the Trust Company, or upon any failure in business, or making of an insolvent assignment by the undersigned, then and in either event all liabilities of the undersigned to the Trust Company shall at the option of the Trust Company become immediately due and payable, notwithstanding any credit or time allowed to the undersigned by any instrument evidencing any of the said liabilities.

3. Upon failure of the undersigned either to pay any indebtedness to the Trust Company when becoming or made due, or to keep up the margin of collateral securities above provided for, then and in either event the Trust Company may immediately, without advertisement, and without notice to the undersigned, sell any of the securities held by it as against any or all of the liabilities of the undersigned, at private sale or broker's board, or otherwise, and apply the proceeds of such sale, as far as needed, towards the payment of any or all of such liabilities, together with interest and expenses of sale, holding the undersigned responsible for any deficiency remaining unpaid after such application. If any such sale be at broker's board or at public auction, the Trust Company may itself be a purchaser at such sale free from any right or equity of redemption of the undersigned, such right and equity being hereby expressly waived and released. Upon default as aforesaid, the

Trust Company may also apply towards the payment of the said liabilities all balances of any deposit account of the undersigned with the Trust Company then existing.

It is further agreed that these presents constitute a continuing agreement, applying to any and all futures as well as to existing transactions between the undersigned and the Trust Company.

Dated, NEW YORK, the day of , 19 .

1541. Agreement of Corporation (with Bank for it to Apply and Hold Property and Its Own Indebtedness in Pledge, etc.).

FOR VALUE RECEIVED, the undersigned, a corporation, agrees with

Bank, that whenever and as long as the undersigned shall for any cause be indebted or liable absolutely or contingently, whether due or not due, in any amount to the said bank, it shall have the right to hold and apply its own indebtedness for any cause to the undersigned, towards and as security for the payment thereof, and shall hold in pledge as security for the payment of the indebtedness or liability, absolute or contingent, of the undersigned, all money or other property of every kind in said bank's possession in which the undersigned has any interest, and may sell that property or any part thereof, at public or private sale, and if at public sale, may become the purchaser thereof; and the undersigned hereby waives notice of said bank's or its officers intention to make such sale, or of the time or place thereof, and any demand of payment of the undersigned's said indebtedness or liability; and so far as that property shall consist of what is usually called commercial paper, the said bank may, instead of selling the same,

collect it, with or without suit, or make such compromise as it may deem best with all or any of the parties thereto, and may extend the time of payment of any such paper without thereby extending the time of payment of the indebtedness or liability aforesaid of the undersigned; and after deducting the expenses of such sales and collections, the said bank may apply the proceeds and the money aforesaid toward the payment of the said indebtedness or liability of the undersigned, rendering any surplus to the undersigned on demand in writing; and all present and future indebtedness or liability of the undersigned to the said bank, and all its present and future demands against the undersigned, shall be deemed to have been contracted and acquired on the faith of this agreement.

, 19 .

1542. Note Secured by Collaterals — With Power of Sale.

\$. , 19 .
 after date, for value received promise to pay to
 or order dollars, at with interest at the rate of
 per centum per annum.
 No.

KNOW ALL MEN BY THESE PRESENTS, that the subscriber hereto justly indebted to or order, upon the foregoing promissory note, bearing even date herewith, for the sum of dollars, and due after date, with interest at the rate of per centum per annum.

NOW, THEREFORE, in consideration of the premises, do hereby make, constitute and appoint or any attorney of any court of record, to be true and lawful attorney, irrevocably, for and in name, place, and stead, to enter appearance, in any court of record in the United States of America, or any territory thereof, or district therein, or elsewhere, at any time after the maturity of said note; to waive the service of process, and confess a judgment against in favor of the said or assigns, upon the said note, for the above sum, legal damages, and interest on the same, or for so much as may appear to be due, according to the tenor and effect of said note, and interest thereon after said note becomes due as aforesaid, at the rate aforesaid, to the day of entry of said judgment, together with legal damages and costs thereon, and also attorney's fees at the rate of per cent. upon the amount of principal and interest due upon said note at the time of entering said judgment; and also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up said judgment, or issuing any execution thereon; and also to waive all benefit or advantage to which may be entitled by virtue of any homestead or other exemption law, now or hereafter in force, in this or any state, territory or district, or elsewhere, where judgment may be entered by virtue hereof. Hereby ratifying and confirming all that said attorney may do by virtue hereof.

WITNESS hand and seal the day of , A. D. 19 .

[Signatures and seals.]

KNOW ALL MEN BY THESE PRESENTS, That the subscriber hereto justly indebted to _____ or order, upon the within promissory note, and has this day deposited with said _____ as security for the payment thereof, the following mentioned collaterals, namely: _____ .

AND in default of payment of said note, or any part thereof, at maturity, do hereby authorize said _____ or assigns, to sell and dispose of said security, or any part thereof, at public or private sale, in _____ or their discretion; and in the event of said security, or any part thereof, depreciating in market value, _____ do hereby authorize said _____ or assigns, at _____ or their option, to sell and dispose of said security, or any part thereof, at any time before or after the maturity of said note, at either public or private sale. And in the event of sale before or after the maturity of said note as aforesaid, no notice of such sale shall be required to be given to the undersigned, or to any other person or persons whomsoever, either by advertisement or otherwise. And the proceeds of such sale or sales so made as aforesaid, shall after the payment of all expenses and commissions attending said sale or sales, be applied on said note, and the balance, if any, after payment of said note with interest, shall be returned to the undersigned, _____ heirs, executors, administrators or assigns. And at any sale of said collaterals, or any part thereof, made by virtue hereof, it shall be optional with the legal owner or holder of said promissory note, to bid for and purchase said collaterals or any part thereof.

WITNESS _____ hand and seal at _____ in the state of _____ this day of _____, A. D. 19 _____ .

[Signatures and seals.]

1543. Principal Note.— With Power of Attorney and Coupon.

§ _____, 19 _____ .
 after date, for VALUE RECEIVED, _____ PROMISE TO PAY to the order of _____ the principal sum of _____ dollars with interest thereon at the rate of _____ per cent. per annum, payable _____ yearly, to wit: on the _____ day of _____ and of _____ in each year, until said principal sum is fully paid. Both principal and interest are payable at _____ .

The several installments of interest, aforesaid, for said period, _____ are further evidenced by _____ interest notes or coupons, of even date herewith.

It is further expressly agreed, that, if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same becomes due and payable, and such default shall continue for _____ days after such installment becomes due and payable, as aforesaid, then, and in that event, the said principal sum of _____ dollars shall, at the election of the legal holder hereof, at once become and be due and payable, anything hereinbefore contained, to the contrary notwithstanding; such election to be made at any time after the expiration of said _____ days, without notice.

The payment of this note is secured by _____ on real estate in _____ .
 No. _____ .

KNOW ALL MEN BY THESE PRESENTS, That the subscriber, justly indebted to the legal holder of the promissory note hereinafter mentioned, in the sum of dollars, secured to be paid by a promissory note for said sum of dollars, of even date herewith, made by payable to the order of after its date, with interest thereon at the rate of per cent. per annum, payable yearly, to wit: on the day of , and of in each year, until the said principal sum is fully paid. Both principal and interest payable at .

By WHICH NOTE IT IS FURTHER EXPRESSLY AGREED, that, if, default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same becomes due and payable, and such default shall continue for days after such installment becomes due and payable as aforesaid, then, and in that event, the said principal sum of dollars, shall at the election of the legal holder of said note, at once become and be due and payable, anything therein or hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said days, without notice.

Now, THEREFORE, IN CONSIDERATION OF THE PREMISES, do hereby make, constitute, and appoint or any attorney of any court of record to be true and lawful attorney, irrevocably, for and in name , place , and stead, to appear in any court of record, in term time or in vacation, at any time after said note becomes due, whether by election as aforesaid, or by the expiration of said to waive the service of process, and confess a judgment in favor of the legal holder of said note, upon the said note, for the above sum, or for as much as shall appear to be due according to the tenor and effect of said note, and interest unpaid thereon, to the day of the entry of said judgment, together with the costs, and dollars, for the attorney's fees; also, to file a cognovit for the said amounts, with an agreement therein, that execution may issue forthwith, and that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere, in any manner, with the operation of said judgment; and to release all errors that may intervene in the entering up of said judgment, or issuing any execution thereon; hereby ratifying and confirming all that said attorney may lawfully do by virtue hereof.

WITNESS, hand and seal this day of , A. D. 19 .

[Signatures and seals.]

1544. Coupon Note.

\$. , 19 .

DUE TO THE ORDER OF , dollars, on the day of , A. D. 19 , without grace, at with interest at the rate of per cent. per annum, after maturity, being for an installment of interest due on that day upon principal promissory note of even date herewith, payable to the order of , years after its date, for the sum of dollars, secured by upon real estate in .

IN CONSIDERATION OF THE PREMISES, do hereby made and appoint or any other attorney of any court of record, to be true and lawful attorney, irrevocably, for and in name, place, and stead, to appear in any court of record, in term time or in vacation, at any time after this interest coupon becomes due, to waive service of process, and confess a judgment in favor of the legal holder hereof, for the amount due and unpaid hereon, with interest, as aforesaid, to the day of entering such judgment, together with costs, and dollars for the attorney's fee; and to file a cognovit for such amounts, with an agreement therein, that execution may issue forthwith, and that no writ of error or appeal shall be prosecuted upon said judgment, nor any bill in equity filed to interfere, in any manner, with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment, or issuing any execution thereon: Hereby ratifying and confirming all that said attorney may do by virtue hereof.

No.

[Signature.]

1545. Chattel Mortgage Note.

No.

, 19 .

after date, for value received, promise to pay to the order of , dollars, at with interest at per cent. per annum after until paid.

AND to secure the payment of said amount hereby authorize, irrevocably, any attorney of any court of record to appear for in such court, in term time or vacation, at any time hereafter, and confess a judgment without process in favor of the holder of this note, for such amount as may appear to be unpaid thereon, together with costs, and dollars attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof.

This note is secured by a chattel mortgage to of even date herewith, on personal property in , and is to bear interest at the rate of per cent. per annum after .

\$

[Signatures.]

1546. Trust Deed Note.— Judgment Clause.

\$

, 19 .

after date, for value received, promise to pay to the order of the sum of dollars, at with interest thereon at the rate of per cent. per annum, payable annually.

This note is secured by a trust deed to , trustee, of even date herewith, on real estate in and is to bear interest at the rate of per cent. per annum after maturity.

AND to secure the payment of said amount hereby authorize, irrevocably, any attorney of any court of record to appear for in such

court, in term time or vacation, at any time after _____ and confess a judgment without process in favor of the holder of this note for such amount as may appear to be unpaid thereon, together with costs, and _____ dollars attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that _____ said attorney may do by virtue hereof.

No. _____

[Signature.]

1547. Judgment Note.

\$ _____

, 19 ____

_____ after date, for value received, _____ promise to pay to the order of the sum of _____ dollars, with interest at the rate of _____ per cent. per annum after _____

No. _____

[Signature.]

KNOW ALL MEN BY THESE PRESENTS, that whereas, the subscriber justly indebted to _____ upon a certain promissory note, bearing even date herewith, for the sum of _____ dollars, made payable to the order of the said _____ and due _____ with interest at the rate of _____ per cent. per annum, after _____

NOW, THEREFORE, in consideration of the premises, and of the sum of one dollar to _____ in hand paid by the said _____ the receipt whereof is hereby acknowledged, _____ do hereby make, constitute, and appoint _____ or any attorney of any court of record, to be _____ true and lawful attorney, irrevocably, for _____ and in _____ name, place, and stead, to appear in and before any court of record, either in term time or in vacation, in any of the states or territories of the United States, at any time after the _____ of said note, to waive the issuing and service of process, and confess a judgment in favor of the said _____ or his or their executors, administrators, assignee, or assignees, or the legal holder or holders of said note. for the above sum, or for so much as shall appear to be due or owing, with interest thereon, according to the tenor and effect of said note, together with costs; also for _____ dollars, attorney's fees, to be added to the amount due or owing on entering up judgment; also to file a cognovit for the amount that may be so due, or owing, including attorney's fees, as aforesaid, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to restrain or interfere, in any manner, with the operation of such judgment, or any execution issued, or to be issued thereon, and to release all errors that may intervene in the entering up of such judgment, or issuing any execution thereon; and, also, to consent, stipulate, and agree to immediate execution upon such judgment; and that any execution issued, or to be issued, upon such judgment, may be immediately levied upon and satisfied out of any personal property which _____ may have or own; and to waive and relinquish all _____ right to have _____ personal property last taken and levied upon to satisfy such execution; hereby ratifying and confirming all that _____ said attorney may do by virtue hereof.

AND IN CONSIDERATION OF THE PREMISES, _____ do hereby stipulate, cove-

nant, and agree, with the said executors, administrators, and with the assignee, assignees, or legal holder, or holders, of said note, that any execution so issued, or to be issued, as aforesaid, may first be levied upon and satisfied out of any personal property which may have or own, hereby expressly waiving all right to have personal property last taken and levied upon to satisfy such execution.

WITNESS, hand and seal this day of A. D. 19 .
[Signatures and seals.]

1548. Installment Note.

\$. , 19 .
FOR VALUE RECEIVED, I promise to pay to the order of , at the sum of dollars, in installments as follows:
day of 19 Dollars,
day of 19 Dollars,
day of 19 Dollars,
all with interest from date, at the rate of per cent. per annum. The consideration of this note is the sale to me by the said of

No. (the receipt of which is hereby acknowledged), upon credit, for the sum of dollars, and, to secure the payment of the above note, I hereby make and create a lien on the said , to the amount of said note, to the said , provided, however, that on the payment of said note, when due, this lien shall be null and void. And provided, further, that until default by me in the payment of said note, as above specified, or some part thereof, I am to retain possession of said

AND IT IS FURTHER AGREED, that in event of the nonpayment of said note, or any part thereof, at the time and place specified in said note, or in case I shall attempt to sell, encumber or remove the said from the present residence of the subscriber in without the written permission of the said , or in case said shall be seized on legal process, then the said , their agents, attorneys or assigns, may declare said note partially or wholly due, and take possession of said , wherever the same may be found, without any process of law, and sell the same at private sale, and out of the proceeds arising from said sale, pay all costs attending the same, and deduct a fair and reasonable commission for making said sale, and out of the balance of said proceeds pay said note, paying over the surplus, if any, to me.

[Signatures and seals.]

STATE OF COLORADO, }
COUNTY OF , } ss.

This instrument was acknowledged before me by this day of , 19 .

[Endorsed.]

No. .
CHATTEL MORTGAGE and installment note to .

STATE OF COLORADO, }
 COUNTY OF , } ss.

I hereby certify that this instrument was filed for record , 19 , at
 o'clock M., and duly recorded in book page .

[Signature.]

Recorder.

[Signature.]

Deputy.

Fees, \$.

FLORIDA.

1549. Chattel Mortgage Note.

FLORIDA, , 19 .

\$.

(after date) promise to pay to the order of the ,
 dollars with interest after maturity at the rate of per cent. per annum
 until paid, for value received, negotiable and payable at and if not
 paid at maturity, this note may be placed in the hands of an attorney-at-law
 for collection; and, in that event, it is agreed and promised by the makers and
 endorsers, severally, to pay an additional sum of dollars, for attorney's
 fees; having deposited with the said payee as collateral security for the
 payment of this note, and any note given in extension or renewal thereof,
 and as security for the payment of any other liability or liabilities of the
 undersigned to said payee, whether now existing, or hereafter arising, the
 following property, viz.: at a present market value hereby estimated
 by the undersigned to be dollars, and should payee, or the holder hereof,
 hereafter consider that the market value of the said securities has declined,
 or should said securities for any reason become unsatisfactory to said payee,
 or the holder hereof, the undersigned hereby agrees to make payment on
 account of this obligation satisfactory to the holder hereof, or to deliver to
 said payee, or the holder hereof, additional securities to the satisfaction of
 the holder of this obligation. And for any other liabilities to said payee
 whether due or not due or hereafter arising, the undersigned also hereby
 gives to said payee a lien upon all property or securities given to or left in
 possession of the said payee by the undersigned. For value received the under-
 signed hereby further agrees that upon the nonperformance of this promise
 to pay, upon failure, insolvency or upon the nonpayment of any of the
 liabilities of the undersigned to said payee, or upon failure of the under-
 signed within three days after date of mailing notice addressed to the maker
 hereof, at his address, as given by him at the time of making this note, and
 endorsed at the foot of this note, to make satisfactory payment on account
 or to furnish additional securities, satisfactory to the payee, or to the holder
 hereof, in case of a decline as aforesaid, then, and in either such case, this
 note and all other obligations and liabilities of the undersigned to said payee,
 and any and all of them shall forthwith become due and payable without
 further demand or notice; and full power and authority is hereby given to
 said payee, or the holder of this note, to sell, assign and deliver the whole
 or any part of the above-mentioned property and securities, or any part
 thereof, or any substitutes therefor, or of any additions thereto, at private

or public sale, at the option of said payee, or the holder hereof, without demand, advertisement or notice of any kind which are hereby expressly waived in respect to any and all such methods of sale. And at such sale the said payee, or the holder hereof, may become the purchaser of the whole or any part, of the said securities free from any right of redemption by the undersigned, which is hereby expressly waived and released. In case of sale for any cause, after deducting all legal and other costs for collection, sale and delivery of said property, including attorney's fees, as hereinbefore provided, the said payee, or the holder hereof, may apply the residue of the proceeds of the sale or sales so made to pay this note, and then to pay any or all of the liabilities of the undersigned to said payee, whether due or not due or hereafter arising, as said payee shall determine, making proper rebate for interest on liabilities not due, returning the overplus, if any, to the undersigned; and the undersigned also agrees that the exercise, or the omission to exercise, by said payee, or the holder hereof, of any of the rights and privileges hereby conferred upon said payee or the holder hereof, shall not waive or affect any other or subsequent right to exercise the same. And the undersigned also agrees to be and remain liable to said payee, or to the holder hereof, for any deficiency after such sale or sales so made, together with interest thereon at the rate of _____ per cent. per annum until the same is fully paid.

[Signatures and seals.]

Address.

MINNESOTA.

1550. Chattel Note.

§ . , 19 .
 On the _____ day of _____, 19____, I promise to pay _____ or order _____ dollars, at the _____ for value received _____, with interest _____, at the rate of _____ per cent. per annum until fully paid.

For the purpose of obtaining credit, I _____, hereby certify that I own in my own name _____ acres of land in section _____ town of _____, county of _____, state of Minnesota, with _____ acres improved worth \$ _____, which is not encumbered by mortgage of otherwise, except \$ _____. I own \$ _____ worth of personal property over and above all indebtedness and exemptions.

The express conditions of the sale and purchase of the _____, for which this note is given is such that the title, ownership or right to the possession does not pass from the said _____, until this note and interest is paid in full; that the said _____ have full power to declare this note due, and take possession of the said _____, at any time _____ insecure, even before the maturity of this note, and I agree to pay ten dollars attorney's fees if suit is brought on this note. Presentment for payment, notice and protest waived.

STATE OF MINNESOTA, }
 COUNTY OF _____, } ss.

I hereby certify that the within instrument was filed in this office for record on the _____ day of _____, A. D. 19____, at _____ o'clock _____ M., and was duly entered in chattel mortgage index book _____ on page _____.

STATE OF MINNESOTA, }
 COUNTY OF , } ss.

I hereby certify that I have compared the within instrument with the original instrument No. , now on file in my office, and that it is a true and correct copy of the same, and of the whole thereof, and that the above is a true copy of the filing thereon.

Dated , 19 .

PENNSYLVANIA.

1551. Fi. Fa. Note.

§ . , 19 .

after date, promise to pay to the order of , dollars, without defalcation, value received, with interest. And further, do hereby authorize and empower any attorney of any court of record of Pennsylvania, or elsewhere, to appear for and to enter judgment against for the above sum, with or without declaration, with costs of suit, release of errors, without stay of execution, and with per cent. added for collecting fess; and also waive the right of inquisition on any real estate that may be levied upon to collect this note, and do hereby voluntarily condemn the same, and authorize the prothonotary to enter upon the FI. FA. said voluntary condemnation, and further agree that said estate may be sold on a FI. FA., and hereby waive and release all relief from any and all appraisement, stay or exemption laws of any state, now in force, or hereafter to be passed.

Witness,

[Signatures and seals.]

1552. Installment Note.

§ . , 19 .

On or before the first day of , 19 , after date, for value received, I, we, or either of us, promise to pay to the order of the sum of dollars, at the office of with interest from date at the rate of per cent. per ; the interest to be paid and if not so paid, then the interest shall become principal, and thereafter bear the same rate of interest. Appraisement waived. The express condition of the delivery of for which this note is given is such that the title, ownership or right of possession does not pass from the said until this note and interest is paid in full, that the said ha full power to declare this note due and take possession of said at any time he may deem insecure, even before the maturity of the note, and to sell the said at public or private sale, the proceeds thereof to be applied toward the payment of this note. It is further agreed that if the proceeds of such sale shall not be sufficient to pay this note and interest in full, that I, we or either of us, agree to pay the remaining balance, together with the expense of collection and accrued interest at the time of such payment. Should suit be brought to recover on this note promise to pay as attorney's fees additional on amount found due on this note. Principal and interest payable in United States gold coin.

WITNESS HAND AND SEAL .

[Signatures and seals.]

1553. Judgment Note with Power of Attorney to Confess Judgment.

\$. [Place and date.]
 after date I promise to pay to , dollars, without defalcation, for value received.

And I also authorize any attorney, of any court of record in , or elsewhere, to confess judgment thereunder and release of errors, and I do hereby waive all stay of execution from and after the maturity of the above note.

WITNESS my hand and seal the day and date above written, with per cent. allowed for collection fees, with interest from date.

[Signature.]

ARIZONA.

1554. Note With Attorney's Fees.

No. . , 19 .
 after date, without grace, for value received, promised to pay to or order, in United States gold coin, with interest thereon in like gold coin, at the rate of per cent. per from until paid. Interest payable , and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and if suit be brought to recover on this note promise to pay as attorney's fees additional on amount found due on this note.

All payable at in , Arizona.

[Signature.]

\$. Due , 19 .

1555. Note, Unpaid, Interest to be Added to Principal.

No. . , 19 .
 after date, without grace, for value received promise to pay to or order, the sum of dollars, with interest thereon at the rate of per cent. per from until paid. Interest payable , and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and should the interest not be paid then the whole sum of principal and interest shall become immediately due and payable, at the option of the holder of this note. Should suit be brought to recover on this note promise to pay as attorney's fees additional on amount found due on this note. Principal and interest payable in United States gold coin. All payable at .

\$. Due , 19 .

[Signatures.]

COLORADO.

1556. Note.

\$. THE COMPANY, OF , No. C.
 , COLORADA,¹ ,
 FOR VALUE RECEIVED, I promise to pay to the Company, of ,
 , or order, at its office in , , with exchange on New York city,
 dollars, on the 1st day of , in the year , with interest thereon

¹See Form No. 1338.

at the rate of _____ per cent. per annum from date until maturity, payable annually, as follows: _____ dollars on the 1st day of _____, _____, and _____ dollars on the 1st day of each succeeding _____, and _____. The principal of this note after maturity, and all interest not paid when due, to bear interest at the rate of 15 per cent. per annum from the time due till paid, and it is hereby agreed that principal and interest shall be paid in gold coin of the United States of America, of the present standard of weight and fineness.

IT IS HEREBY AGREED, that if default be made in the payment of any one of the installments of interest above specified, then the said principal sum, with all arrearages of interest, shall, at the election of the holder hereof, become at once due and payable, such election to be made at any time after default and without notice. This note may be paid at any office of _____ Company, by payment according to the terms thereof, and by paying to such company, in addition, the average rate of premium charged by banks of _____, _____, during the preceding twelve months on New York Exchange.

[Signature.]

IDAHO.

1557. Note.

\$ _____ THE _____ COMPANY, OF _____, _____, _____, IDAHO,¹ _____, No. E.

FOR VALUE RECEIVED, I promise to pay to the _____ Company, of _____, _____, a corporation, or order, at its office in _____, _____, _____ dollars, on the 1st day of _____, in the year _____, with interest thereon at the rate of _____ per cent. per annum from date until maturity, payable _____ annually, as follows: _____ dollars on the 1st day of _____, 189 _____, and _____ dollars on the 1st day of each succeeding _____ and _____. The principal of this note after maturity to bear interest at the rate of 12 per cent. per annum from the time due till paid, and it is hereby agreed that principal and interest shall be paid in gold coin of the United States of America, of the present standard of weight and fineness.

IT IS HEREBY AGREED, that if default be made in the payment of any one of the installments of interest above specified, then the said principal sum, with all arrearages of interest, shall, at the election of the holder hereof, become at once due and payable, such election to be made at any time after default and without notice. This note may be paid at the _____ National Bank of _____, _____, by payment according to the terms thereof, and by paying to such bank in addition the average rate of premium charged by banks of _____, _____, during the preceding twelve months on New York exchange.

[Signature.]

LOUISIANA.

1558. Note.

\$ _____ THE _____ COMPANY, OF _____, _____, _____, LOUISIANA,² _____, No. M.

FOR VALUE RECEIVED, I promise to pay to the _____ Company, of _____, _____, a corporation, or order, at its office in _____, _____, _____ dollars, on the 1st day of _____, in the year _____, with interest thereon at the rate of _____ per cent. per annum from date until maturity, payable annually, as follows: _____ dollars on the 1st day of _____, _____, and _____ dollars on the 1st day

¹ See Form No. 1349.

² See Form No. 1366.

of each succeeding . The principal of this note, after maturity, and all interest, not paid when due, to bear interest at the rate of 8 per cent. per annum from the time due till paid, and it is hereby agreed that principal and interest shall be paid in gold coin of the United States of America of the present standard of weight and fineness.

IT IS HEREBY AGREED, that if default be made in the payment of any one of the installments of interest above specified, then the said principal sum, with all arrearages of interest, shall, at the election of the holder hereof, become at once due and payable, such election to be made at any time after default and without notice. And, for the faithful payment of this note, I hereby waive all rights of exemption, and all rights to notice of seizure, and appraisement of real estate, secured to me by the Constitution and laws of the state of Louisiana, as against the payee or assignee of this note, in regard to the collection thereof. And I also agree to pay a sum equal to 10 per cent. of the amount due hereon as attorney's fees, if this note is not paid according to its legal tenor and effect and is placed in an attorney's hands for collection.

[Signature.]

MINNESOTA.

1559. Note.

\$. THE COMPANY, OF , MINNESOTA,¹ No. .

FOR VALUE RECEIVED, I promise to pay to the Company, of , or order, at its office in , dollars, as follows: dollars on the 1st day of , 189 , and dollars on the 1st day of each succeeding and , with interest thereon at the rate of 10 per cent. per annum after due until paid, and it is hereby agreed that all payments shall be in gold coin of the United States, of the present standard of weight and fineness.

IT IS HEREBY AGREED, that if default be made in the payment of any one of the above installments, then all of the principal sum above specified shall, at the election of the holder hereof, become at once due and payable, such election to be made at any time after default and without notice. This note is given for services rendered by the Company and its agents in procuring me a loan of dollars due 1, .

This note may be discharged in full by the following payment: dollars on the 1st day of , , in gold coin of the United States of America, of the present standard of weight and fineness. And it is agreed that in case this note is so paid and only in such case and in consideration of such payment at such time, the Company will procure or permit to the maker or makers hereof, the payment of the notes given in said loan before maturity, at the following times; one note at the expiration of each year after the last above-named date. This note may be paid at any office of , or at the National Bank of . Minnesota, by payment according to terms thereof, and by paying to such company or such bank in addition the average rate of premium charged by banks of , Minnesota, during the preceding twelve months on New York Exchange.

[Signature.]

¹ See Form No. 1375

NORTH DAKOTA.**1560. Note.**

\$. THE COMPANY, OF , No. .
 , NORTH DAKOTA,¹ , .

FOR VALUE RECEIVED, I promise to pay to the Company, of ,
 , or order, at its office in , , dollars, as follows:
 dollars on the 1st day of , , and dollars on the 1st day
 of each succeeding and , with interest thereon at the rate of 12
 per cent. per annum after due until paid, and it is hereby agreed that all
 payments shall be in gold coin of the United States of America, of the present
 standard of weight and fineness.

IT IS HEREBY AGREED, that if default be made in the payment of any one of
 the above installments, then all of the principal sums above specified shall,
 at the election of the holder hereof, become at once due and payable, such
 election to be made at any time after default and without notice.

The amount agreed upon to be received for the use by the borrower is
 dollars. The rate per cent. thereon of interest contracted to be charged is
 per cent. per annum.

This note may be discharged in full by the following payment: dollars
 on the 1st day of , 189 , in gold coin of the United States of America
 of the present standard of weight and fineness. And it is agreed that, in case
 this note is so paid and only in such case and in consideration of such pay-
 ment at such time, the Company will procure or permit to the maker or
 makers hereof, the payment of the notes given in said loan, before maturity,
 at the following times; one note at the expiration of each year after the last
 above-named date. This note may be paid at any office of , or at
 the National Bank of , by payment according to the terms thereof,
 and by paying to such company or such bank, in addition, the average rate
 of premium charged by banks of , during the preceeding twelve months,
 on New York Exchange. [Signature.]

SOUTH DAKOTA.**1561. Note.**

\$. THE COMPANY, OF , No. .
 , SOUTH DAKOTA,¹ , .

FOR VALUE RECEIVED, I promise to pay to the Company, of ,
 , or order, at its office in , , dollars, as follows:
 dollars on the 1st day of , , and dollars on the 1st day of each
 succeeding and , with interest thereon at the rate of 12 per cent.
 per annum after due until paid.

IT IS HEREBY AGREED, that if default be made in the payment of any one of
 the above installments, then all of the principal sum above specified shall, at
 the election of the holder hereof, become at once due and payable, such election
 to be made at any time after default and without notice. This note is given
 for services rendered by the Company and its agents in procuring me
 a loan of dollars due 1, .

This note may be discharged in full by the following payments: dol-
 lars on the 1st day of , A. D. ; dollars on the 1st day of
 , A. D. .

¹ See Form No. 1375

And it is agreed that in case this note is so paid and only in such case and in consideration of such payments at such times, the Company will, on sixty days' notice, procure or permit to the maker or makers hereof, at the date of any interest payment, the payment before maturity of the note or notes, or any of them, given for said loan; and in case the Company shall, at the request of the maker or makers hereof, or at the request of any purchaser of the mortgaged property, so procure or permit the payment of the said note or notes, or any of them, given for the said loan, then it is agreed that the said last-named amounts shall be due and payable at or before the said last-named dates. This note may be paid at the Bank of , by payment according to the terms thereof, and by paying to such bank, in addition, the average rate of premium charged by banks of , during the preceding twelve months on the New York Exchange.

[Signature.]

TEXAS.

1562. Note.

§ . THE COMPANY, OF , No. , TEXAS,¹ , 1 .

FOR VALUE RECEIVED, promise to pay to the Company, of , or order, at the National Bank of , in , Texas: dollars on the 1st day of , in the year , with interest thereon at the rate of per cent. per annum from date until maturity, payable annually, as follows: dollars on the 1st day of , , and dollars on the 1st day of each succeeding and .

The principal of this note after maturity and all interest not paid when due to bear interest at the rate of 10 per cent. per annum from the time due until paid, and principal and interest to be paid in gold coin of the United States of America, of the present standard of weight and fineness.

also agree to pay a sum equal to 10 per cent. on the amount due hereon, as attorney's fees, if this note is not paid according to its legal tenor and effect, and is placed in an attorney's hands for collection.

IT IS HEREBY AGREED, that if default be made in the payment of any one of the installments of interest above specified, then the said principal sum, with all arrearages of interest, shall, at the election of the holder hereof, become at once due and payable, such election to be made at any time after default and without notice.

This note is given as a part of the purchase price of, and is a vendor's lien on acres of land described in the deed made by to , on the day of , A. D. , which is recorded in Book , page of the Records of Deeds of county, Texas. This note may be paid at any office of the Company by payment according to the terms thereof, and by paying to such company, in addition, the average rate of premium charged by banks of Dallas, Texas, during the preceding twelve months on New York Exchange.

[Signature.]

¹ See Form No 1410.

UTAH.

1563. Note.

\$. THE COMPANY, OF , No. .
 , UTAH,¹

FOR VALUE RECEIVED, I promise to pay to the Company, of , a corporation, or order, at its office in , with exchange on New York city: dollars, on the 1st day of , in the year , with interest thereon at the rate of per cent. per annum from date until maturity, payable annually, as follows: dollars on the 1st day of , 189 , and dollars on the 1st day of each succeeding , and . The principal of this note, after maturity, and all interest not paid when due, to bear interest at the rate of 12 per cent. per annum, from the time due till paid, and it is hereby agreed that principal and interest shall be paid in gold coin of the United States of America, of the present standard of weight and fineness.

IT IS HEREBY AGREED, that if default be made in the payment of any one of the installments of interest above specified, then the said principal sum, with all arrearages of interest, shall, at the election of the holder hereof, become at once due and payable, such election to be made at any time after default and without notice. This note and interest may be paid at any branch office of Company, by payment according to the terms thereof, and by paying to such company, in addition, the average rate of premium charged by banks of , Utah, during the preceding twelve months on New York Exchange.

[Signature.]

CHAPTER LII.

PROTESTS.

A **PROTEST** is a notarial act, done to furnish convenient evidence, in commercial affairs. A *protest of a bill or note* is made by the notary taking it to the place for presentment, and demanding acceptance or payment according to the case, and declaring and certifying default. He then gives notice to the indorsers (and other parties, if any, who may be charged upon the bill or note), either directly or through the holder of the paper, who in turn will notify them. *Marine protests* are declarations of the master, etc., of a vessel, authenticated by a notary, setting forth a disaster and its causes. This is to be first made within twenty-four hours of arrival, and is entered by the notary in his records; and a more extended statement may be afterwards made before him or another notary.

As to statutory provisions relating to protest in New York state, which also apply in the states where the uniform Negotiable Instruments Law was adopted, see Negotiable Instruments Law, §§ 160-189, and 260-268; Birdseye, C. & G. Cons. Laws, pp. 3674-3682, 3693-3695.

I PROTESTS OF BILLS AND NOTES

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I. PROTESTS OF BILLS AND NOTES.

1564. Certificate of Protest.

[At the head of the paper attach the bill or note, with a wafer or gum.]

UNITED STATES OF AMERICA,)
 STATE OF ,) ss.
 County of ,)

On the day of ,¹ at the request of [*here name holder*]. I, M. N., a notary public of the state of , duly commissioned and sworn,* did present² the original bill of exchange [or, promissory note] hereunto annexed, to Y. Z., the maker [or, the drawee, or, the acceptor],³ at [*here state the place of demand*],⁴ and demanded payment [or, acceptance], who refused to pay [or, accept] the same. Whereupon * I, the said rotary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer and indorsers of the said bill [or, note] as against all others whom it doth or may concern, for exchange, re-exchange and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment [or, acceptance] of the same.

THUS DONE AND PROTESTED in the city of aforesaid, in the presence of John Doe and Richard Roe, witnesses.
 [Official seal.] In testimonium veritatis.

[Signature of notary public.]

1565. Certificate of Service of Notice.

UNITED STATES OF AMERICA,)
 State of New York,)
 County of New York)

I, M. N., a notary public of the state of New York, duly commissioned and sworn, do hereby certify, that on the day of , due notice of the protest of the before-mentioned bill [or, note] was served upon C. D. personally, and upon E. F., by putting the same into the post-office directed to him at , and upon G. H., by putting the same into the post-office

1 The hour of the presentment need not be stated. It will be presumed that it was at a reasonable hour. it state a presentment to one of the firm, it should name the one, and describe him as such -- e. g., thus, "to Y. Z., one of the firm of Y. Z. & Co., the makers."

2 The certificate must show that the notary himself presented the bill or note. Stating that he caused it to be presented is not enough. 4 The place should be distinctly stated. If the note is payable at a bank, it is not enough to state a demand on the cashier of the bank without saying where.

3 If they are a firm, the certificate should either state a presentment to the firm, or, if

directed to him at _____, each of the said places being the reputed residence of the person to whom the notice was directed, and the post-office nearest thereto, and each of said notices being mailed at _____ and postage prepaid.

[*Signature and title.*]

1566. Certificate of Protest; When the Maker, eto, Cannot Be Found.

[*As in form 1564, inserting some such statement as the following in lieu of the words between the * * :*] did present the original _____ hereunto annexed, at _____, at the place of business of E. F., the acceptor [*or, maker*] of the said _____, he being absent therefrom [*or, at the dwelling-house of E. F., etc., his place of business being closed, and he being absent from his said dwelling-house*], and demanded payment of the same, which was refused [*or, did make diligent inquiry for the said E. F., and his place of business, or dwelling-house, in the said town of _____, where the said _____ was made payable [or, purported to be drawn], but was unable to find the said E. F., or his place of business, or dwelling-house, in said _____, in order to demand payment of the said _____*]. Whereupon, etc.

1567. Notice of Protest of Note.

TO MESSRS. W. S. AND D. H. S.:

Please take notice that a promissory note made by S. H., treasurer, for _____ dollars, dated _____, payable _____ months from date, in favor of yourselves, and indorsed by you, has been presented by me to the office of the said treasurer, at _____, and payment being duly demanded, was refused, whereupon, by direction of the holder, the same has been protested, and payment thereof is requested of you.

[*Signature of notary public.*]

1568. Notice of Protest of Bill for Nonacceptance.

TO MR. A. B.:

Please take notice, that your bill for _____ dollars, at _____ days from sight, dated _____, drawn on C. D., has this day been protested for nonacceptance.

[*Date.*]

[*Signature of notary public.*]

1569. Notice of Protest for Nonpayment.

TO MR. A. B.:

Please take notice that your bill for _____ dollars, at _____ days from sight, dated _____, drawn on and accepted by C. D., has this day been protested for nonpayment [*or, that the bill of A. B. for _____ dollars, at _____ days from sight, dated _____, drawn on and accepted by C. D., and indorsed by you, or, by you and by E. F., has this day been protested for nonpayment.*]

[*Date.*]

[*Signature of notary public.*]

No precise form of words, and no particular manner, is necessary to be used in giving the drawers notice of dishonor; but the note or bill should be described in the notice with such distinctness and certainty as will enable the party notified to ascertain from it the particular bill to which it refers, and will, in addition, import that the bill has been dishonored; and it is usual also to inform the party notified that he is looked to for payment.

II. MARINE PROTESTS.

1570. Notation of Protest.

State of _____ ,
 County of _____ , } ss.

By this public instrument be it known, unto all whom it may concern, that on this _____ day of _____, before me, A. B., a notary public in and for the state of _____, by letters-patent under the great seal of the state, duly commissioned and sworn, and dwelling in the city of _____, personally came C. D., master of the ship called the Mary, of _____, of the burden of _____ tons or thereabouts, now lying in the port of _____, and said that he sailed in and with the said vessel on the _____ day of _____ last, from the port of _____, with a cargo of _____ bound to the port of _____. Having, in the due prosecution of the said voyage [*here state briefly any accident that may have occurred, or the cause of putting into port*], he now enters with me, the said notary, in due form of law, his protest, to serve as occasion may require, reserving to himself the right to extend the same in time and place convenient.

IN TESTIMONY WHEREOF, the said master has hereunto subscribed his name, and I, the said notary, have to these presents set my hand and seal of office, the day of the date first above written.

[*Signature of master.*]

[*Signature of notary public.*]

1571. Protest; Extended Before the Same Notary.

By this public instrument of protest, be it known to all to whom these presents shall come, that on this _____ day of _____, in the year of our Lord one thousand nine hundred and _____, before me, A. B., a public notary in and for the state of _____, by letters-patent under the great seal of the state, duly commissioned and sworn, personally appeared C. D., master, E. F., first mate [*etc., etc.*], of the late brig Mary, of _____, of the burden of _____ tons, or thereabouts, who, being by me duly sworn, severally declared on oath (protest having been duly noted before me on arrival) that * [*here set forth the facts in detail*].

And that any loss, damage, or injury, which has arisen or accrued, or that may arise or be sustained in any manner whatever, is solely owing to the accidents and difficulties herein set forth and declared, and not to any negligence, want of skill, vigilance, or exertion on the part of the deponents, or any of the officers or men of the said ship.

Wherefore, the said A. B., master and commander as aforesaid, hath requested me to protest, and I, the said notary, at such, his request, have protested, and by these presents do publicly and solemnly protest against all and every person and persons whom it doth, shall, or may concern, and against all and singular, the accidents, casualties, and circumstances already set forth in the foregoing declaration, on oath, for all manner of losses, costs, damages, charges, expenses, and injuries whatsoever, which the said ship and her cargo on board, and the freight by her earned, or to be earned, or either of

them, or any part thereof, have already sustained, or may hereafter sustain, by reason or means of the foregoing premises.

THUS DONE AND PROTESTED, in the city of _____, this _____ day
 [SEAL.] of _____, in the year of our Lord one thousand nine hundred
 and _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal.

[Signatures of deponents.]

[Signature of notary public.]

COUNTY OF _____, ss.

I, A. B., a public notary, in and for said county, duly commissioned and sworn, dwelling in said _____, do certify the foregoing to be a true and exact copy of an original protest on record in my office.

IN TESTIMONY WHEREOF, I hereunto set my hand and notarial
 [SEAL.] seal, this _____ day of _____, one thousand nine hundred
 and _____.

[Signature of notary public.]

1572. Protest; Extended Before Another Notary.

By this public instrument of protest, be it known to all whom it may concern, that on the _____ day of _____, in the year of our Lord one thousand nine hundred and _____, before M. N., a notary public, of _____, personally appeared C. D., master of the ship *Mary*, of _____, of the burden of about _____ tons, and noted with him in due time, and in due form of law, his protest, for the uses and purposes hereinafter mentioned.

AND NOW, on this _____ day of _____, in the year _____, before me, A. B., a notary public, in and for the county of _____, in the state of _____, duly commissioned and sworn, and residing in the city of _____, and state aforesaid, comes the said C. D., and requires me to extend his said protest, and together with him come and appear [naming them], of said vessel, all of whom being by me duly sworn, severally declared on oath that [continuing as in preceding form, from the *].

1573. Protest in Consequence of a Loss by Collision.

By this public instrument, etc., [continuing as in Form No. 1571, to the *], and these appearers, the said G. H. and E. F., for themselves declare and say, that about _____ A. M., on the _____ of _____, while the vessel was proceeding on her said intended voyage, the other appearer, the said C. D., being below in bed, and the said vessel being between _____ and _____, the wind being about east-southeast, with moderate weather and smooth water, the vessel running before the wind and steering west-northwest, under all sail, with a square sail and half topsail set; and the appearer, G. H., being then at the helm, and this appearer, the said E. F., being forward, he called out that he saw a light on the starboard bow, and they at first thought it was _____ light, but it afterwards turned out to be the light of the steamer _____. That this appearer, the said E. F., immediately went below for a light, and brought a lantern on deck, and showed a light over the starboard bow, and this appearer, the said G. H., put the helm of the _____ to starboard until the course was altered from west-northwest to southwest, in order to avoid the steamer. That after so altering their course, this appearer, the said E. F., shifted the light from the bow to abaft the rigging on the star-

board side, to make it better seen by the crew on board the steamer, and both these appearers, the said G. H. and E. F., called out to the steamer to starboard her helm, and in about five minutes after light was shown, the steamer struck the , and she went down in a few minutes afterwards. And this appearer, the said C. D., for himself declares and says, that he was below in bed, and was awakened by the said G. H. calling out "steamer ahoy," and immediately ran upon deck in his shirt and drawers, and saw the appearer, the said E. F., holding a lantern on the starboard quarter, and this appearer, the said C. D., had not been a minute on deck before the steamer struck the . And these appearers, the said G. H. and C. D. and E. F., for themselves declare and say, that immediately after the said C. D. came on deck, the steamer struck the nearly amidships, and for the preservation of their lives, these appearers, and another of the crew of the jumped on board the steamer, and arrived back at in her, on the of , ; and on the same day this appearer, the said G. H., appeared at the office of me, the said notary, and caused this protest to be duly noted. And the appearers do protest, and I, the said notary, do also protest against the said steamer, and the said collision, striking, facts, occurrences, and all loss or damage occasioned thereby.

Thus done and protested [*as in Form No. 1571*].

1574. Notarial Certified Copy of a Ship's Protest.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., notary public, duly commissioned and sworn, residing in , in the county of , in the state of , do hereby certify that the paper writing hereunto annexed, purporting to be a copy of the protest of the master and part of the crew therein named of the ship or vessel, the , bearing date the day of , last, is a true and correct copy of the said protest, the same having been carefully examined and compared with the original protest, which was made and declared before me [or, before , of , aforesaid notary public], [or, as the case may be, examined and compared with the original draft of the said protest, drawn up and registered in my office, and which protest was duly made and declared before me, the said notary].

IN TESTIMONY WHEREOF, I have hereunto subscribed my name,
 [SEAL.] and affixed my seal of office, this day of ,
 [*Signature of notary.*]

1575. Protest by Shippers of Goods.

[Against the masters and owners of a vessel, in consequence of the master's refusal, after notice, to sign a bill of lading in the customary form.]

By this public instrument of protest, be it known and made manifest unto all people, that on the day of , in the year one thousand eight hundred and , personally came and appeared before me, A. B., notary public, duly commissioned and sworn, residing in , in the county of , in the state of , C. D., one of the firm of C. D. & Co., of , merchants, the shippers of goods and merchandise per the ship or vessel the , bound on a voyage from to ; and E. F., of , clerk to the said C. D. & Co., who, being severally sworn, did declare and depose; and first this appearer, the said E. F., for himself did declare and state as follows, that is to say, that this appearer did attend for the said C. D. & Co., the shippers, and did conduct the delivery on the

day of _____, instant, at and alongside of the said vessel, the _____, of the goods and merchandise mentioned in the duplicate [*or, copy*] bill of lading hereinafter mentioned. That E. Z., the master of the said ship or vessel, signed and gave a bill of lading for the _____ chests of merchandise therein mentioned, with the words "one chest in dispute; if on board, to be delivered; contents unknown," written at the foot thereof, and the said C. D. & Co. objected to the same, and that this appearer, the said E. F., was present, and did see the said _____ chests of merchandise carefully delivered, at and alongside the said vessel, at _____, aforesaid, in the usual manner, and left under the charge of the mate and crew thereof; and that, on this _____ day of _____, instant, this appearer, the said E. F., did deliver to the said E. Z., a notice and demand signed by the said C. D. & Co., of which a copy is hereunto annexed, but the said E. Z. refused to comply therewith, or to sign or deliver any other bill of lading in another form.

And the appearer, the said C. D., for and on behalf of himself and of his said copartner in trade, under the said firm name of C. D. & Co., and for and on behalf of all other persons who are, or shall or may be interested in the said goods or merchandise, doth declare and protest before me, and I, the said notary, at the request of the said shippers, the said C. D. & Co., do protest against the owners and the said master of the said vessel, for and in respect of the said refusal and neglect to sign and give a correct bill of lading for the said goods, in the usual and customary form, and for and in respect of all fall of markets, loss, damage, or expenses, which the said shippers, or any other person or persons, who is, or are, or shall, or may be, interested therein, have or hath incurred, or may incur, by reason of the premises.

[Signed and sealed as in Form No. 1571.]

1576. Copy of the Notice to the Master.

[Referred to in the foregoing protest, objecting to the qualification introduced into the bill of lading, without consent, and demanding a bill of lading in the customary form.]

To CAPTAIN E. Z., MASTER OF THE SHIP OR VESSEL CALLED THE _____ :

We, the shippers of _____ chests of merchandise on board the _____, for _____, hereby give you notice that we object to the qualification or exception of "one chest in dispute; if on board, to be delivered; contents unknown," added without our consent to the bill of lading signed by you for the said goods, for _____, and that we hold you and the owners of the vessel responsible for the value and safety of all and every goods which we shall prove to have been delivered at the said vessel; and we demand and require you forthwith to sign and deliver to us a bill of lading for the said goods, in an usual, legal, and customary form, and we give you notice that in default thereof, we protest against you, and we hold you and the owners of the vessel responsible for all loss, damage, or expenses, by reason of the premises.

Dated, _____.

C. D. & Co.

1577. Protest by Merchants.

[Against the master and owners, in consequence of the master not proceeding to sea, after signing bills of lading.]

By this public instrument of protest, be it known and made manifest unto all people, that on the _____ day of _____, in the year _____, personally came and appeared before me, a notary public, duly commissioned and sworn, re-

siding in _____, in the county of _____, in the state of _____, A. B., of _____, aforesaid, merchant, one of the partners composing the firm of A. B. & Co., who, being sworn, did declare and depose as follows, that is to say, that this appearer and his copartner, under their said firm name of A. B. & Co., did on the _____ day of _____, last, ship on board the ship or vessel called the _____, _____, master, at _____, then bound on a voyage from _____ to [here state the destination and describe the goods]; and that the said _____, the master of the said ship, signed the usual bills of lading for the said bills and merchandise, part expressed to be deliverable to order, and the other part to Messrs. _____, of _____, aforesaid; and that soon after this appearer's said firm shipped the goods on board the said vessel, she was ready for sea, and that the wind was fair, and she might have proceeded on her said voyage on or about the _____ day of _____ last, and that vessels bound to the same port as the said vessel have sailed since she was ready for sea, but that she has not done so, although this appearer has repeatedly given notice to and required the said master to set sail and proceed with the said vessel and the said goods on board, on her said intended voyage to _____, but that she is still lying and remaining in the port of _____. Wherefore, the said appearer, A. B., on behalf of himself and his said firm, and for and on behalf of all other persons who are, or shall, or may, be interested in the said goods, doth protest, and I, the said notary, at his request, do protest, against the said master, the crew and the owner or owners of the said vessel, for all negligence, inattention, and delay, and all fall of market, loss, damage, and expenses which the said appearer, or his said firm, or the owners or consignees of the said cargo of goods may sustain, or be put unto, in consequence of such delay, matters, and circumstances as aforesaid. A. B.

THIS PROTESTED in due form at _____, aforesaid, the day and [SEAL.] year first above written, before me.

[Signature of notary.]

1578. Protest by the Master of a Vessel.

[Against the consignee of goods, for not discharging and taking them from the vessel in a reasonable time.]

By this public instrument of protest, be it known and made manifest unto all people, that on the _____ day of _____, in the year _____, personally came and appeared before me, Y. Z., notary public, duly commissioned and sworn, residing in _____, in the county of _____, in the state of _____, _____, master of the ship or vessel, the _____, belonging to the port of _____, who, being duly sworn, did declare and depose as follows, that is to say, that this appearer did, on or about the _____ day of _____, last, receive on board the said vessel, at the port of _____, in the _____ of _____ [here describe the goods], all of which were shipped on board her there by E. F., addressed to C. D., at _____, aforesaid; and this appearer duly signed bills of lading, as customary, expressing the said goods to be deliverable to the said C. D., at _____, he or they paying freight for the same, with primage accustomed. That this appearer proceeded with the said goods on board the said vessel direct to _____, aforesaid, where she arrived on the _____ day of _____, instant, and on the _____ day of _____, instant, when the said vessel had been reported, and had got into a proper berth for discharging, this appearer gave notice to the

said C. D., to whom the said goods were addressed, that this appearer was ready to deliver the said goods, but from that time up to the date and making of these presents, neither the said C. D., nor any other person on his behalf, hath received or discharged, or offered to receive or discharge, the said goods from the said vessel, or paid or offered to pay the freight and primage thereof, although this appearer is willing and desirous to deliver the said goods; and notwithstanding this appearer hath several times applied to and requested the said C. D. to have the said goods discharged from the said vessel, and received by him, yet he still delays and neglects so to do; and that such delay and neglect are unreasonable, and injurious to the interests of the owners and master of the said vessel. Wherefore, the said appearer, A. B., on behalf of the owners of the said vessel, and on behalf of himself, as master, doth protest, and I, the said notary, at his request, do also protest against the said C. D., and against all and every other person or persons whomsoever responsible, or whom these protests do or may concern, and holding him or them responsible for all demurrage, loss, damage, wages, and expenses incurred, owing or sustained, or to be incurred or sustained, in consequence of such unreasonable delay, detention, and circumstances as aforesaid.

[Signature.]

THIS PROTESTED in due form at _____, aforesaid, the day and [SEAL] year first above written, before me.

[Signature of notary.]

CHAPTER LIII.

PROXY.

A PROXY is a person appointed in the place of another to represent him, and the instrument by which a person is appointed so to act is likewise called a proxy. It is mostly used by stockholders of corporations in transferring the exercise of their right to vote on the affairs of the corporation. It must be executed in writing by the party himself, or his authorized attorney. The corporation laws of the several states have special provisions relating to its execution, validity, etc.¹

| | |
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1579. General Form of Proxy.

KNOW ALL MEN BY THESE PRESENTS, that _____ do hereby constitute and appoint _____, attorney and agent for _____, and in _____ name, place and stead, to vote as _____ proxy at the next election of _____, of the _____, and for inspectors of election, according to the number of votes and upon the shares of stock _____ should be entitled to vote, if then personally present,

¹For the statute in New York, see the General Corporation Laws, § 26; Birdseye, C. & G. Cons. Laws, p. 1991.

and authorize to act for and in name and stead, at the next meeting for the election of directors as fully as could act if were present, giving to said agent and attorney full power of substitution and revocation.

[This proxy is to continue in force until the day of , unless sooner revoked.]

IN WITNESS WHEREOF, have hereunto set hand and seal, this day of , one thousand nine hundred and .
Sealed and delivered in the presence of .

1580. Proxy, Another Form.

UNITED STATES STEEL CORPORATION.

PROXY FOR ANNUAL MEETING OF , 19 .

KNOW ALL MEN BY THESE PRESENTS, that the undersigned stockholder in United States Steel Corporation do hereby constitute and appoint R. B., H. C. F., E. H. G., F. H. P., and N. B. R., and each of them, true and lawful attorneys, agents and proxies of the undersigned, with power of substitution, for and in the name, place and stead of the undersigned, to vote upon all common stock and all preferred stock, or either, held or owned by the undersigned, at the annual meeting of the stockholders of the United States Steel Corporation, to be held at the office of said corporation at Hoboken, New Jersey, on Monday, the day of , 19 , and at any and all adjournments thereof, for the transaction of any and all business that may come before the meeting, including considering and voting upon the approval of the by-laws as amended; considering and voting upon the approval and ratification of all contracts, acts, proceedings, elections and appointments by the Board of Directors or by the Executive Committee or by the Finance Committee since the annual meeting of the corporation (including the matters referred to in the notice of this meeting and in the annual report to stockholders); the election of eight directors to hold office for three years; the election of independent auditors; and upon any and all matters that may come before the meeting, according to the number of votes the undersigned would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given to vote upon such stock, and ratifying and confirming all that said attorneys, agents or proxies may do by virtue hereof. A majority of all or of any of said attorneys, agents and proxies who shall be present and shall act at the meeting (or if only one shall be present and act, then that one) shall have, and may exercise, all of the powers of all of said attorneys, agents and proxies hereunder, and they are instructed to vote in favor of approving the amended by-laws and in favor of the approval and ratification of each and every of said contracts, acts, proceedings, elections and appointments.

WITNESS hand and seal this day of , 19 .
Witness:

[SEAL.]

Address.

CHAPTER LIV.

RECEIPTS.

A RECEIPT is a written acknowledgment of a delivery, either of money or of other property. It is executed by the party who receives the thing delivered, and operates against him as his admission of the fact, which he will not be allowed, in a court of justice, to contradict without showing some adequate reason.

Receipts may occur as clauses inserted in the frame of instruments having an independent character; as in a deed or in a bill of lading. In this chapter is only considered the form of drawing a receipt when it is to be given separately.

A receipt which contains nothing but a single acknowledgment that a payment of money or delivery of property has been made, without any special clauses, and without a seal, is not treated in law as of very binding or conclusive effect. It is merely presumptive evidence of the fact admitted. It is in general open to explanation. The rule which applies to written agreements, that they cannot be varied by parol evidence, does not apply to such a receipt; but the party may show the circumstances under which it was given, and may avoid its effect not only by showing that he was led to give it by fraud, or by some serious mistake, but generally by any clear proof that the money receipted for was not actually paid.

A more conclusive character is impressed upon a receipt by affixing a seal to it. It will then be deemed to conclude the party executing it.

Clauses inserted in a receipt which import a contract as to the application of the money, or the effect to be attributed to the payment, may render it conclusive, drawing it within the rule which forbids the contradiction of written contracts. This is particularly true, when the amount of a debt being honestly contested, a receipt is given for a less sum "*in full*" of the whole.

Whenever an innocent person has acted upon faith reposed in a receipt, in such a way that he would be injured by allowing it to be falsified, the rule which permits it to be explained away by parol evidence does not apply as against him.

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1581. General Receipt for Money.

\$. Received from Y. Z. the sum of dollars.

[Date.]

A. B.

1582. For Chattels.

Received from Y. Z., one car, one wagon, one plough, one harrow, one black horse, five years old, known as Jack, and a yoke of oxen, heretofore kept by said Y. Z., on his farm in .

[Date.]

A. B.

1583. For Papers.

I hereby acknowledge that I have received from Y. Z. the several notes [or, deeds, or, contracts], and other papers, which are enumerated and described in the schedule annexed.

[Date.]

A. B.

[Annex list, identifying papers by dates, parties' names, etc.]

1584. Receipt for Money Paid by a Third Person.

\$. Received from Y. Z. by the hand of M. N., , the sum of dollars.

[Date.]

A. B.

1585. Receipt for Money on Behalf of a Third Person.

\$. Received from Y. Z. the sum of dollars.

A. B.,

Per M. N.

1586. Form for Indorsing a Receipt on a Written Instrument.

\$. Received from Y. Z. the sum of dollars, being [a part of] the amount due upon the written bond [or, contract, or, policy of insurance, etc.].

A. B.

[Date.]

1587. Receipt on Account Generally.

\$. Received from Y. Z. the sum of dollars, on account.

[Date.]

A. B.

1588. Receipt for a Quarter's Rent.¹

\$. Received of Y. Z. the sum of dollars, being one quarter's rent, due this day, for my dwelling-house and estate No. street, now occupied by said Y. Z.

[Date.]

A. B.

1589. For Interest on a Bond.

\$. Received of Y. Z. the sum of dollars, being the annual interest due on his bond, dated the day of , given to me [or, to M. N.], and conditioned for the payment of the sum of two thousand dollars, in three years from date, with annual interest [which payment herein acknowledged, I promise to indorse on said bond].

[Date.]

A. B.

¹ A receipt for a sum of money expressed to be "to secure board, and to be applied on the first week's board; to be forfeited if not taken,"— *Held*, to be a contract, and not liable to be varied by parol evidence of previous arrangements. *Townsend v. Fisher*, 2 Hilt. 47.

1590. For Part of the Principal of a Bond.

\$. Received of Y. Z. the sum of dollars, to apply on his bond, dated the day of , , given to me [or, to M. N.], being the same payment which I have this day indorsed on said bond.

[Date.]

A. B.

1591. For Payment for Professional Services.

\$. Received from Y. Z. the sum of dollars, for professional services rendered by me in [state the nature of the services].

[Date.]

A. B.

1592. For Money to Be Paid Over.

\$. Received from Y. Z. the sum of dollars, to be paid to the Bank of , on their surrendering a note which they hold, made by said Y. Z., dated the day of , , for dollars, payable days after [date.] date.

A. B.

1593. For Money to be Disbursed.

\$. Received from Y. Z. the sum of dollars, to be expended in necessary traveling expenses and disbursements in going to Washington for him to obtain letters patent [or otherwise state the nature of the disbursements intended].

[Date.]

A. B.

1594. For Money to be Repaid.

\$. Received from Y. Z., of , the sum of dollars, which I promise to repay to him on demand [or, in days, or, months; or, on the day of ,].

[Date.]

A. B.

1595. For Papers to be Safely Kept and Restored.

I hereby acknowledge that the several deeds and writings contained in the schedule annexed, were this day delivered to me by Y. Z., of, etc., and I hereby undertake to keep them with the same degree of care as I keep my own deeds, writings, and papers, or other valuable effects, and to restore them to the said Y. Z., his heirs or assigns, on his or their, etc. [state the condition, or say, upon request], uninjured and undefaced, inevitable casualty excepted.

[Date.]

A. B.

[Annex schedule, as in Form 1583.]

1596. Receipt of Books and Papers by Successor to Office.

I hereby acknowledge that the sum of dollars was this day delivered to me by A. B., of, etc., late of , of the city of , in the county of , the same being the balance of moneys remaining in his hands, as ascertained . And also certain vouchers No. and , both inclusive, and said numbers corresponding with the numbers in his cash account, with disbursements, amounting in the aggregate to the sum of dollars. Also account books, and copies of the following [annex schedule showing in detail the books received.]

Dated, .

[Signature.]

1600. **Formal Recognizance.**

STATE OF _____, }
 County of _____, } ss.

Be it remembered, that I, A. B., of the town of _____, in said county, do hereby acknowledge myself to be indebted to the people of the state of _____ in the sum of _____ dollars, to be well and truly paid, if default shall be made in the condition following:

WHEREAS, the said A. B. [*here briefly state the circumstances authorizing the exaction of the recognizance*]: NOW, THEREFORE, the condition of this recognizance is such, that if the said A. B. shall [*here state what is to be performed by him*], then this recognizance shall be void; else, to remain of force. [Signature and seal.]

Subscribed and acknowledged [in open court], this _____ day of _____, _____, before me.

[Signature and title of magistrate or clerk of court.]

CHAPTER LVI.

RELEASES.

THE distinction between a release and a receipt is, that the first, by its own operation, extinguishes a pre-existing right, and, therefore, cannot be contradicted or explained by parol; the second, has never the effect of destroying a subsisting right, but is merely evidence of a fact—the fact of payment—and, therefore, like all other facts given in evidence, may be refuted or explained.

A release by one of two or more creditors or claimants, who must have joined as plaintiffs had an action been brought, is valid and binding on the others, unless it shows that the consideration was not for their benefit. So a release given to one of several joint debtors who must have been joined as defendants if an action had been brought, is valid, and has the effect of discharging all the debtors, if it be under seal. But it is competent for the parties to prevent this effect by expressing in the release that it is not to discharge the other joint debtors.

In general, a release should express a consideration; and it is usual to state a nominal consideration if there is no other; and the instrument should also be under seal.

A general release will be confined in its operation to the demands which appear to have been intended by the parties, notwithstanding general words. Especially where the same instrument is executed by various persons, standing in various relations, and having various kinds of claims and demands against the releasee, general words, though the most broad and comprehensive, are to be limited to particular demands, where it manifestly appears, by the consideration, by the recital, by the nature and circumstances of the several demands, to one or more of which it is proposed to apply the release, that it was so intended to be limited by the parties. And for the purpose of ascertaining that intent, every part of the instrument is to be considered.

But the intention to limit the release to a particular debt must be shown by the deed itself, or by the instruments *in pari materia* containing the agreement and release.

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1601. General Release of All Demands.

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, GREETING:

Know ye, that _____, for and in consideration of the sum of _____, lawful money of the United States of America, to _____ in hand paid by _____, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and by these presents do for _____ heirs, executors, and administrators, remise, release, and forever discharge the said _____, _____ heirs, executors, and administrators, of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, ex-tents, executions, claims, and demands whatsoever in law or in equity, which against _____ ever had, now ha _____ or which _____, _____ heirs, executors, or administrators, hereafter can, shall, or may have * for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

IN WITNESS WHEREOF, _____ have hereunto set _____ hand and seal _____, the day of _____, in the year of our Lord one thousand nine hundred and _____

Sealed and delivered in the presence of _____

1602. Mutual General Release.

THIS INDENTURE, made this _____ day of _____, _____, between A. B., of _____, of the one part, and Y. Z., of _____, of the other part, WITNESSETH: That the said A. B. and Y. Z. have this day canceled and delivered up to the other certain covenants, bonds, notes, and written contracts, upon which he claimed to have demands on the other; the said claims and instruments so canceled and delivered up being supposed and intended to be all the claims and evidence of claims by either of the parties hereto on the other. And in consideration thereof, each of them, the said A. B. and Y. Z., does hereby, for himself and his legal representatives, release and absolutely and forever discharge the other of and from all claims and demands, actions, causes of action, of every name and nature, so that neither of them shall have any claim on the other, directly or indirectly, on any contract, or supposed liability, or thing undertaken, done, or omitted to be done, from the beginning of the world to this day.

IN TESTIMONY WHEREOF, the said parties have hereto interchangeably set their hands and seals, the day and year first above written.

In presence of _____

[Signature of witness.]

[Signatures and seals.]

1603. General Release Sometimes Required by an Award.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of the city of _____, for and in consideration of the sum of one dollar to me in hand paid by Y. Z., of _____, and in pursuance of an award made by M. N., O. P., and Q. R., arbitrators between us, the said A. B. and Y. Z., and bearing date the day of _____, one thousand eight hundred and _____, do hereby release and forever discharge the said Y. Z., his heirs, executors, and administrators, of and from all actions, causes of action, suits, controversies, claims, and demands whatsoever, for or by reason of any matter, cause, or thing, from the beginning of the world down to [here insert the date of the bonds of arbitration, or of the submission].

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of _____, one thousand nine hundred and _____.

In presence of _____

[Signature and seal.]

[Signature of witness.]

1604. Special Release.

[As in Form 13b5, to the *, continuing by stating the special matter intended — e. g., thus:] by reason of a mortgage made by one M. N. to me, dated the _____ day of _____, upon lands in _____, and by reason of the said Y. Z. having assumed to pay the same.

IN WITNESS [etc., as above].

1605. Release by a Ward on Coming of Age, to His Guardian.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of _____, son and heir of _____, deceased, in consideration of _____, by these presents remise, release, and forever discharge Y. Z., of _____, my guardian, of and from all and all manner of actions, suits, accounts, debts, dues, and demands whatsoever, which I ever had, now have, or which I or my executors or administrators, at any time hereafter, can or may have, claim or demand against the said Y. Z., his executors or administrators, for, touching, or concerning the management and disposition of any of the lands, tenements, or hereditaments of the said A. B., situate, etc., or any part thereof, or for or by reason of any money, rents, or other profits by him received out of the same, or any payments made thereof, during the minority of the said A. B., or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date hereof.

IN WITNESS [etc., as above].

1606. Release by One Partner.

IN CONSIDERATION of the sum of one dollar to me in hand paid by Y. Z., of _____, I do, on behalf of the firm of A. B. & Co., of _____, hereby release, quitclaim, and forever discharge the said Y. Z. of and from all the debts, dues, claims, and demands which the said firm of A. B. & Co. have against the said Y. Z.

[Signature and seal.]

[Date.]

1607. Release by Creditor of One Partner.¹

WHEREAS, the late copartnership firm of S. & G., composed of J. S. and H. G., heretofore conducting business at _____, are indebted to me, the undersigned G. C., in the sum of _____ dollars, by virtue of a judgment recovered in the _____ court, in the _____, on the _____ day of _____, in an action wherein said G. C. was the plaintiff, and the said J. S. and H. G., composing the late firm of S. & G. were defendants; and,

WHEREAS, such firm has been dissolved; and,

WHEREAS, I have agreed with H. G., a member of the said firm, to compound or compromise my claim on him individually, in respect of the said indebtedness to me of the said firm, for the sum of _____ dollars:

NOW, KNOW YE, that in consideration of the sum of _____ dollars to me, the said G. C., paid by the said H. G., at or before the time of subscribing this release, and for other good and valuable considerations to me moving, I, the said G. C., do hereby, according to the statute in such case made, release, acquit, and forever discharge the said H. G. and his estate, of and from all individual liability, claim, and demand whatsoever, for or in respect of the said indebtedness to me, of the said late firm.

PROVIDED, HOWEVER, that this present release is made pursuant to² an act, entitled _____, passed _____, and shall have no greater or other effect than as by the said act and by this release is provided.

WITNESS my hand, this _____ day of _____, etc.

G. C.

1608. Release of One of Several Partners or Joint Debtors.

WHEREAS, the late copartnership firm of Y. Z. & Co., of _____, are indebted to me, the undersigned A. B., of the city of _____, in the sum of _____ dollars [*and if the indebtedness is on a judgment of a court of record of this state, add words to this effect*, by virtue of a judgment recovered in the supreme court of the state of _____, in an action wherein said A. B. was the plaintiff, and the said late firm were defendant.]³ And,

WHEREAS, such firm has been dissolved; and,

WHEREAS, I have agreed with Y. Z., a member of the said firm, to compound or compromise my claim on him individually in respect of the said indebtedness to me of the said firm, for the sum of _____ dollars:

NOW KNOW YE, that in consideration of the sum of _____ dollars to me, the said A. B., paid by the said Y. Z., at or before the time of subscribing this release, I, the said A. B., do hereby, according to the statute in such case made, release, acquit, and forever discharge, the said Y. Z. and his estate of and from all individual liability, claim, and demand whatsoever, for or in respect of the said indebtedness to me of the said late firm: PROVIDED, HOWEVER, that this present release is made pursuant to² [an act, entitled "An Act,

¹ This release is executed according to the right of action against any other joint provisions prevailing in several states, by debtor. (New York Code Civ. Pro. § 1942.)

which a joint debtor may make a separate composition with his creditor, such composition to discharge the debtor making it, and him only. A member of a partnership cannot thus compound for a partnership debt, until the partnership has been dissolved. Such release does not impair the creditor's

² In New York State say [the provisions of § 1942 of the Code of Civil Procedure].

³ If the indebtedness is on a judgment, the release should be acknowledged and filed with the clerk of the court in which the judgment was obtained.

etc.," passed], and shall have no greater or other effect than as by the said act and by this release is provided.

WITNESS my hand, this day of , .
[Signature and seal.]

1609. Release of Lands from the Lien of a Judgment.

[Title of the cause.]

JUDGMENT for dollars damages and costs. Judgment-roll filed, and judgment docketed on the day of , , in the office of the clerk of .

IN CONSIDERATION of dollars to me in hand paid, I do hereby release and discharge the lands and premises hereafter described, from all claim, interest, and lien which I may have by virtue of the above-mentioned judgment, and any proceedings thereupon. [Description.]

WITNESS my hand and seal, this day of , .
[Signature and seal.]

1610. Release of Lands from a Legacy Charged Thereupon by Will.

THIS INDENTURE, made the day of , between A. B., of, etc., (releasor), of the one part, and C. D., of etc. (releasee), of the other part:

WHEREAS, S. H., late of, etc., duly made and executed his last will and testament, in writing, dated the day of , and thereby (amongst other things) he gave and bequeathed the sum of dollars to the said A. B., and directed that the same should be charged on, and be payable primarily out of his real estate, and the said testator by his said will gave and devised all his real estate so charged as aforesaid unto the said C. D., his heirs and assigns forever, and said testator having died, and his will having been proved; and,

WHEREAS [here state the consideration for giving the release]:

NOW THIS INDENTURE WITNESSETH: That, in pursuance of the said agreement, and in consideration of the sum of dollars to the said A. B. paid by the said C. D., on or before the execution of these presents (the receipt whereof he, the said A. B., doth hereby acknowledge), he, the said A. B., doth hereby release, exonerate, and forever discharge the said C. D., his heirs, executors, administrators, and assigns, and every of them, and also all and every the lands, tenements, hereditaments, and real estate by the said will of the said S. H. charged with the payment of the said legacy of dollars, and all interest on account thereof, and all claims and demands for or in respect of the same. And he covenants with said C. D., that he has not done any act whereby he is prevented from releasing the said sum of dollars.

IN WITNESS [etc., as above.]

1611. Release of Mortgage.

THIS INDENTURE, made the day of , in the year one thousand nine hundred and , between of , of the first part, and of , of the second part:

WHEREAS, , by indenture of mortgage, bearing date the day of , one thousand nine hundred and , recorded in the office of ,

of the county of _____, in Liber _____ of Mortgages, page _____, on the _____ day of _____, _____, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements of which the lands hereinafter described are part, unto _____; and,

WHEREAS, the said part _____ of the first part, at the request of the said part _____ of the second part, ha _____ agreed to give up and surrender the lands hereinafter described unto the said part _____ of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage:

NOW THIS INDENTURE WITNESSETH: That the said part _____ of the first part, in pursuance of the said agreement and in consideration of _____, to _____ duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha _____ granted, released, quitclaimed, and set over, and by these presents do _____ grant, release, quitclaim, and set over unto the said part _____ of the second part, all that part of the said mortgaged lands [*here describe premises*].

TOGETHER with the hereditaments and appurtenances thereunto belonging; and all the right, title, and interest of the said part _____ of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said part _____ of the first part as heretofore.

TO HAVE AND TO HOLD, the lands and premises hereby released and conveyed to the said part _____ of the second part, _____ heirs and assigns, to their own proper use, benefit, and behoof forever, free, clear, and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

IN WITNESS WHEREOF, the said part _____ of the first part ha hereunto set _____ hand and seal the day and year first above written.

Sealed and delivered in the presence of _____ [*Signatures and seals.*]

CHAPTER LVII.

SATISFACTION PIECES.

JUDGMENTS, mortgages which have been registered, and other liens resting in record, should have the evidence of their discharge also recorded. The instrument appropriate to this purpose is termed a satisfaction-piece. It should be acknowledged or proved by a witness in the same way as a deed, according to the forms given in the chapter on ACKNOWLEDGMENT AND PROOF OF DEEDS.

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1612. Satisfaction of Judgment.

[Name of court and
title of cause.]

COUNTY OF .

Satisfaction is acknowledged between A. B., plaintiff, and Y. Z., defendant, for the sum of dollars, judgment entered, * in the judgment-book of the court * in the county of , the day of , one thousand nine hundred and . [Signature of judgment creditor.]

Acknowledged before me, the
day of , , by the said A.
B., to me known [or, proven by the
oath of M. N., a credible witness]
to be the plaintiff in the above
action.

[Signature of officer.]

1613. Satisfaction of Justice's Judgment.

[As in the preceding form, substituting for the words between the * * the following:] judgment rendered by M. N., Esq., a justice of the peace in the town of , and county of , for dollars and cents, damages and costs; transcript filed and judgment docketed,—

1614. Satisfaction of Mortgage.

I, A. B. [or, we, the president, directors, and company of, etc.], do hereby certify, that a certain mortgage, bearing date the day of , in the year one thousand nine hundred and , made and executed by Y. Z., of [and W. Z. his wife], to me [or, to us — or, to one M. N., and by him heretofore assigned to me — or, us], and recorded in the office of , in the county of , in Liber of Mortgages, page [or, if a chattel mortgage, say: and filed in the office of , in the county of], on the day of , is paid. And I [or, we] do hereby consent that the same be discharged of record.

Dated the day of , [or, if executed by a corporation, say:
In witness whereof, the said [naming corporation] have caused their corporate seal to be hereunto affixed, this day of , 18].

In presence of [Signature, etc.]

[Signature of witness.]

[Add acknowledgment or proof by subscribing witness, as in case of a deed.]

1615. Satisfaction of Mortgage by Assignee.

I, , of the city and county of , do hereby certify that a certain mortgage bearing date the day of , in the year , made and executed by , of the first part, to , of the second part, and recorded in the office of register of the city and county of , in Liber of Mortgages, page , on the day of , in the year , and which said mortgage was duly assigned to me by the said , the mortgagee above named, by assignment dated the day of , in the year , and recorded in the office of register of the city and county of

aforesaid, in Liber of Mortgages, page , on the day of , in the year , is fully paid, satisfied, and discharged.

Dated the day of , in the year .

In presence of

[Signature.]

[Here add acknowledgment or proof by subscribing witnesses, as in case of a deed.]

1616. Satisfaction by an Executor, Administrator, or Trustee.

I, , executor of the last will and testament of , deceased [or, administrator of the goods, chattels, and credits which were of , deceased— or, trustee of the estate of , etc.], do hereby certify, that a certain mortgage made and executed by , to the said , in his lifetime [or, to me as such trustee, as aforesaid], bearing date [etc., following the preceding form, as the case may require].

1617. Satisfaction of a Chattel Mortgage.

I, , the mortgagee within named [or, the assignee of the within-named mortgage], do hereby certify that the within mortgage is fully paid, satisfied, and discharged.

Dated the day of , in the year .

In presence of

[Signature.]

1618. Satisfaction of a Mortgage by a Corporation with Proof of Execution.

I, , president of the Bank of , the corporation described in and which executed the within instrument, do hereby certify that a certain mortgage bearing date the day of , in the year 18 , made and executed by , and , his wife, to , and by the said assigned to the said Bank of , by assignment dated the day of , in the year , and recorded in the office of the clerk in the county of in Liber No. of Mortgages, page , and which said mortgage was recorded in the office of the clerk of the county aforesaid, in Liber No. of Mortgages, page , on the day of , in the year , is fully paid, satisfied, and discharged.

IN WITNESS WHEREOF, the said Bank of , has caused its corporate seal to be hereunto affixed, the day of , in the year .

1619. Satisfaction of Mechanic's Lien.

I, A. B., do hereby certify, that a certain mechanic's lien, filed in the office of the clerk of the county of , the day of , one thousand nine hundred and , at o'clock in the noon, in favor of A. B., claimant, against the building and lot situate on the side of street, in , between and streets, and known as No. in said street, M. N., owner, and O. P., contractor, is discharged.

In presence of

[Signature of lienor.]

[Signature of witness.]

[Add acknowledgment or proof by subscribing witness, as in case of a deed.]

CHAPTER LVIII.

SEALS.

ACCORDING to the more strict authorities, a seal is an impression upon wax, wafer, or some other tenacious substance affixed to the paper or parchment on which an instrument is written. In many of the southern and western states, as well as in Pennsylvania and New Jersey, this kind of seal has been dispensed with, the courts holding a scroll or device, made by the pen or printed, to be a sufficient seal, if intended as such. In some of the states, the use of private seals has been wholly dispensed with by statute. In others, as in New York, the statutes authorize corporate, official, and judicial seals to be made by an impression upon the paper directly, without the use of wax or wafer.¹

The rules which prevail in the several states, in respect to private seals, are, for greater convenience, stated in the chapter of ACKNOWLEDGMENTS AND PROOF OF DEEDS, where the law will be found, in the alphabetical order of the names of the states.

The effects of affixing a seal upon a contract are, in general — first, that it imports or implies a consideration sufficient in itself to support the contract; and second, that lapse of time will not bar a right of action on the contract until twenty years have passed, instead of barring it in six years or such other briefer period as the law may prescribe for unsealed contracts.

CHAPTER LIX.

SEARCHES.

IN examining the title to real property, the conveyancer may look through the records himself, or may, by a requisition addressed to the recording officer, procure him to search for and certify the conveyances and incumbrances. The requisition and certificate is termed a search. In drawing it or filling the blanks (which can usually be procured at the law stationer's), particular regard should be had to the time during which the person searched against has owned the premises, so as to cover fully his period of title in seeking for conveyances etc., and to the times fixed by the statutes regulating other liens, such as judgments, which may affect the property though recovered against him before he became the owner. The clerk who searches for judgments will return those that have been satisfied, as well as those which have not; and satisfied judgments should be inquired into, for they may have been satisfied by a sheriff's sale of the very property in question.

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1620. Search for Deeds, etc.

ALL THAT CERTAIN [etc., inserting a full description of the land; and, if a city lot, it will be convenient to give a diagram of the block showing the position of the lot].

THE REGISTER of the county of New York will please search for mortgages, conveyances, leases, and all other incumbrances of record in his

¹General Construction Law, § 43; Birdseye, C. & G. Laws, 1909, p. 1953.

office, of, upon, or affecting the premises above described, or any part thereof, by the persons whose names are hereto subjoined, and for the periods set opposite their respective names, and certify the result below, for .

[Date.] [Signature of conveyancer.]

[Here insert names and dates — e. g., thus]: .

Against A. B., from the day of , , to the day of ,

Against C. D., from the day of , , to date of your return.

[The officer will add his return, thus:]

A. B. and wife to C. D. Deed dated the day of , , and recorded the day of , in Liber of Deeds, p. .

Nothing else found.

[Date.] [Signature of officer.]

1621. County Clerk's Search.

The clerk of the county of New York will please search in his office for judgments and decrees, and also

| | | |
|--------------------|---|--|
| For transcripts of | { | Decrees in chancery or equity. |
| | | Judgments from the late and present supreme court. |
| | | Judgments from the superior court. |
| | | Judgments from the court of common pleas. |
| | } | Judgments from other courts. |

Also transcripts from the marine, city and justice's courts against the following:

[Here insert names and periods.]

Also for surrogate's decrees, and forfeited recognizances, against the same persons for the same periods.

Also, for mechanic's liens affecting property side of street, near , since , against A. B.

Also, for unsafe-building notices affecting same property since the passage of the act, against A. B.

Also, for bonds of collectors, and their sureties, from April, 1838, to April, 1844, against A. B.

Also, for notices of *lis pendens*.

Also, for certificate of sheriff's and marshal's sales.

Also, for insolvent assignments.

Also, for general assignments.

Also, for foreclosures by advertisement.

Also, for appointment of receivers.

Against the persons following, for the following periods respectively [names and periods.] [Signature of conveyancer.]

1622. Search for Judgments in United States Courts.

TO THE CLERK OF THE CIRCUIT [or, DISTRICT] COURT:

Please search for judgments in the circuit [or, district] court of the United States for the district of New York, against the persons whose names are hereto subjoined, and for the periods set opposite their respective names, and certify the result below, for .

[Date.] [Signature of conveyancer.]

[Add names and periods.]

1623. Loan Commission Search.

The commissioners for loaning moneys of the United States in the county of _____, will please search in their office for mortgages upon premises [*here briefly designate them*], made by [*names*].

[*Date.*]

[*Signature of conveyancer.*]

1624. Tax Search.

To M. N.:

Please search for taxes, assessments, water-rents, and sales for the same, or either of them, of, upon, or affecting the premises laid down on the following diagram, or any part thereof, and certify the result below, for

[*Date.*]

[*Signature of conveyancer.*]

[*Diagram showing location and dimensions of premises.*]

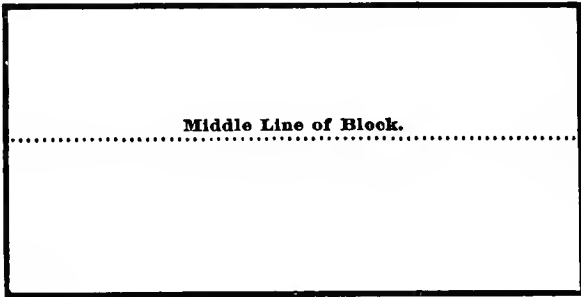
1625. Short Period Search Directed to Guarantee Companies in New York City.

[*Describe either by words or by diagram.*]

Section .

Block .

Against all th _____ lot of land lying in the _____ of _____, and



Please note plainly the North Point.

To THE _____ COMPANY.

Search in the county of _____, as follows:

In the register's office. } For all conveyances, mortgages unsatisfied of record, assignments of unsatisfied mortgages, leases, and other instruments of record, affecting the above-described premises, against the following persons and for the periods set against their names respectively:

| Names. | From. | To. |
|--------|-------|-----|
| | | |

In the county clerk's office.

For notices of *lis pendens*.
 For certificates of sheriff's and marshal's sales (continuing in each case to a date eleven years later than the period named, or to the date of return).
 For insolvent assignments.
 For general assignments.
 For notices of foreclosure by advertisement.
 For appointments of receivers.
 For appointments of trustees (of absconding, concealed, nonresident, or imprisoned debtors).
 For exemptions under Homestead Act.
 For unsafe building liens (since the passage of the act).
 For bonds of collectors and their sureties (from April, 1838, to April, 1844).

Affecting said premises, against the following persons and for the periods set against their names respectively:

| Names. | From. | To. |
|--------|-------|-----|
| | | |

In the office of the U. S. loan commissioners. { For all mortgages unsatisfied of record, affecting said premises, against the following persons and for the periods set against their names respectively:

| Names. | From. | To. |
|--------|-------|-----|
| | | |

In the office of the comptroller of the city of . { For bonds of receivers of taxes, deputy receivers of taxes, first clerks in office of receivers of taxes, and their sureties, since , against the following persons and for the periods set against their names respectively:

| Names. | From. | To. |
|--------|-------|-----|
| | | |

Search also as follows:

- Taxes. { For all unpaid taxes, assessments, and water rates, and sales for the same, affecting said premises since .
- Mechanics' liens. { In the office of the clerk of the county of for all mechanics' liens filed in that office, within year last past, affecting said premises.
- Judgments. { And search in the offices of the clerk of the county of , the clerk of the circuit court of the United States, for the district of , and the clerk of the district court of the United States, for the district of , and for all judgments, decrees, and transcripts thereof, against the following-named persons, for the periods set opposite their names respectively:

| Names. | From. | To. |
|--------|-------|-----|
| | | |

- Petition in bankruptcy. { In the office of the clerk of the district court of the United States for the district of , for petitions in bankruptcy, against the following persons, and for the periods set against their names respectively:

| Names. | From. | To. |
|--------|-------|-----|
| | | |

And certify the result in writing, for .
 Dated, ; address: ; No. ; wanted

CHAPTER LX.

SHIPPING ARTICLES.

THE statutes of the United States¹ provide that every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burden of fifty tons or upwards, bound from a port in one state to a port in any other than an adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in

¹ U. S. R. S., §§ 4511-4523.

print, with every seaman or mariner on board such ship or vessel (except such as shall be apprentice or servant to himself or owners), declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped.

Carrying out a seaman without his first signing such articles subjects the master to a penalty, and entitles the seaman, for his service, to the highest wages given at the port, within three months preceding the time of shipment.

At the foot of every such contract there must be a memorandum in writing of the day and hour on which the seamen or mariners, who shall so ship and subscribe, shall render themselves on board, to begin the voyage agreed upon.

Nothing repugnant to the foregoing requirements can be inserted; but additional provisions not inconsistent with them may be inserted. The courts, however, are careful, in protection of seamen, to inquire into harsh or unusual stipulations, and they will not enforce, against seamen, stipulations which operate to their disadvantage, and are inserted in the articles in addition to the stipulations recognized by this act, unless it appear, from evidence outside the articles, that the seamen fully understood the stipulations and received an adequate consideration therefor.

1626. Form of Shipping Articles.

UNITED STATES OF AMERICA.

IT IS AGREED between the master and seamen, or mariners, of the [*name of vessel*], of _____, whereof A. B. is at present master, or whoever shall go for master, now bound from the port of [*naming shipping port*], to [*here designate the voyage definitely*].¹

THAT, in consideration of the monthly or other wages against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage: And the said master doth hereby agree with and hire the said seamen or mariners for the said voyages, at such monthly wages or prices, to be paid pursuant to this agreement, and the laws of the congress of the United States of America, and the custom and usage of the port of _____. And they, the said seamen or mariners, do severally hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said vessel, or the boats thereunto belonging, as become good and faithful seamen or mariners; and at all places where the said vessel shall put in, or anchor at during the said voyage, to do their best endeavors for the preservation of the said vessel and cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said vessel on board any other vessel, or be on shore, under any pretense whatsoever, until the above said voyage be ended, and the said vessel be discharged of her loading, without leave first obtained of the captain or commanding officer on board; that in default thereof, he or they will be liable to all the penalties and forfeitures mentioned in the Marine Law, enacted for the government and regulation of seamen in the merchants' service, in which it is enacted, "That if any seaman or mariner shall absent himself from on board the ship or vessel, without leave of the master or officer commanding on board; and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or

¹ Not only the termini of the voyage must be stated, but it must be so stated as to render the voyage or voyages definite and certain. A clause providing that the voyage between two ports may be either "direct or via ports in the East Indies or Europe," since it leaves the master at liberty to make such voyagea thither as he pleases, leaves the seaman at liberty to abandon the service. Snow v. Wopec, 2 Curt. U. Ct. 801.

mariner, on the day on which he shall so absent himself; and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owner or owners of the said ship or vessel, and moreover shall be liable to pay him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place."

AND IT IS FURTHER AGREED, that in case of desertion, death, or imprisonment the wages are to cease.

AND IT IS FURTHER AGREED, by both parties that each and every lawful command which the said master or other officer shall think necessary hereafter to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, shall be strictly complied with, under the penalty of the person or persons disobeying, forfeiting his or their whole wages or hire, together with everything belonging to him or them on board the said vessel.

AND IT IS FURTHER AGREED ON, that no officer or seaman belonging to the said vessel shall demand or be entitled to his wages, or any part thereof, until the arrival of said vessel at the said vessel's final port of discharge, and her cargo delivered.

AND IT IS HEREBY FURTHER AGREED, between the master, officers, and seamen of the said vessel, that whatever apparel, furniture, and stores each of them may receive into their charge, belonging to the said vessel, shall be accounted for on her return; and in case anything shall be lost or damaged through their carelessness or inefficiency, it shall be made good by such officer or seaman, by whose means it may happen, to the master and owners of the said vessel.

AND IT IS HEREBY EXPRESSLY AGREED, that should the said ship on the said voyage be seized, detained, or fined, for smuggling tobacco, or any other article, by one or more of the undersigned sailors, cooks, or stewards, they shall all be responsible for the damages thence resulting, and shall severally forfeit their wages, and all their goods and chattels on board to the amount of such damage, and that the certificate of the person or persons who may seize, detain, or fine the said ship for smuggling, signed by him or them, and verified by the American consul at _____ under his seal of office, shall be conclusive evidence of the facts therein stated in all courts whatsoever, and especially as to the fact that smuggling had been committed, the individual or individuals by whom the same had been committed, the amount of the fine imposed therefor upon the said ship, the incidental expenses thereon, and the number of days the said ship was detained in consequence thereof. No grog allowed, and none to be put on board by the crew; and no profane language allowed, nor any sheath-knives permitted to be brought or used on board.

AND WHEREAS, it is customary for the officers and seamen while the vessel is in port, or while the cargo is delivering, to go on shore at night to sleep, greatly to the prejudice of such vessel and freighters,

BE IT FURTHER AGREED, by the said parties, that neither officer nor seaman shall, on any pretense whatever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master shall think necessary to order relative to said vessel or cargo;

AND WHEREAS, it frequently happens that the owner or captain incurs expenses while in a foreign port, relative to the imprisonment of one or more of his officers or crew, or in the attendance of nurses, or in the payment of board on shore, for the benefit of such person or persons:

NOW IT IS UNDERSTOOD AND AGREED by the parties hereunto, that all such expenditures as may be incurred by reason of the foregoing premises, shall be charged to, and deducted out of the wages of, any officer or such one of the crew by whose means or for whose benefit the same shall have been paid.

AND WHEREAS, it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel:

BE IT THEREFORE AGREED BY THESE PRESENTS, that whatever officer or seaman the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there deliver his charge to the vessel's husband, or his representative, to see the same safely landed.

THAT each seaman or mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no desertion, plunderage, embezzlement or other unlawful acts committed on the said vessel's cargo or stores), shall be entitled to the payment of the wages or hire that may become due to him pursuant to this agreement, as to their names is severally affixed and set forth: Provided, nevertheless, that if any of the said crew disobey the orders of the said master or other officer of the said vessel, or absent himself at any time without liberty, his wages due at the time of such disobedience or absence shall be forfeited; and in case such person or persons so forfeiting wages shall be reinstated or permitted to do further duty, it shall not do away such forfeiture.

IT BEING UNDERSTOOD AND AGREED, by the said parties, that parol proof of the misconduct, absence, or desertion of any officer or any of the crew of said vessel, may be given in evidence at any trial between the parties to this contract, any act, law, or usage to the contrary thereof notwithstanding.

IN TESTIMONY WHEREOF, and for the due performance of each and every of the above-mentioned articles and agreements, and acknowledgment of their being voluntarily, and without compulsion or any other clandestine means being used, agreed to and signed by us, we have each and every of us hereunto affixed our hands; the month and day against our names as hereunder written.

AND IT IS HEREBY UNDERSTOOD AND MUTUALLY AGREED, by and between the parties aforesaid, that they will render themselves on board the said vessel, on or before [Saturday] the day of , at o'clock in the noon. [*Here set down in columns the date of entry; signature by the seamen; stations; birthplace; age; height in feet and inches; wages per month; advance wages; advance abroad; hospital money; time of service in months and days; whole wages; wages due; sureties; and witnesses of the signing of each, substantially as follows.*]

On the back of the articles there is usually a receipt in full, in the following form:

RECEIPT TO BE ANNEXED TO THE FOREGOING.

We, the undersigned, late mariners on board the _____, on her late voyage described on the other side of this instrument, and now performed to this place of payment, do hereby, each one for ourselves, with our signatures, acknowledge to have received of _____, agent or owner of said _____, the full sum hereunder set against our names; being in full amount of our wages for our services, and all demands, for assault and battery, or imprisonment, of whatever name or nature, against said _____, her owners or officers, to the day or date hereunder also set against our names. [Signatures.]

CHAPTER LXI.

STRAYS.

The statutes of the states generally provide for simple proceedings for disposing of strayed domestic animals, if unreclaimed after notice.

The following forms are agreeable to the laws of New York, and will also prove a convenient guide elsewhere. The provisions in New York state are to be found in the Town Law, §§ 380-396. Birdseye, C. & G. Cons. Law, 1909, pp. 6236-6241. See also chapters on FENCES AND FENCEVIEWERS; HIGHWAYS, and WRECKS.

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1627. Notice to Town Clerk of Lien Upon Strays.

TO THE TOWN CLERK OF THE TOWN OF _____ IN THE COUNTY OF _____.

Take notice that I, A. B., residing at [giving full statement of residence], have taken and now have in my possession certain animals [here describe them fully, giving color or other distinguishing marks] which were found on or about the _____ day of _____, and more than five days since, upon my inclosed lands [or, on land owned and occupied by me, doing damage], and which have not come upon such lands from adjoining lands, where they were lawfully kept, by reason of my refusal or neglect to make or maintain a division fence as required of me by law, and that I claim a lien upon said animals for the damage sustained by me by reason of their so coming upon my said lands and doing damage, and for my reasonable charges, fees, and costs in connection therewith.

Dated _____, _____.

1628. Notice to Owner of Beasts Taken Doing Damage.

To A. B.:

You are hereby notified that certain animals owned by you, to wit: [*here describe them fully, giving color or other distinguishing marks*] have come or been found within thirty days last past upon my inclosed lands [*or, on land owned and occupied by me, doing damage*], and which have not come upon such lands from adjoining lands, where they were lawfully kept, by reason of my refusal or neglect to make or maintain a division fence as required of me by law, and that the said animals are now upon my lands in the town of [*here describe situation fully*] [*or, in pound at the village of*], and are held by me as strays [*or, beasts doing damage*], and that I claim a lien thereupon as provided by law.

1629. Notice to be Published Where Owner Is Not Known.

TO THE OWNER OR OWNERS OF CERTAIN ANIMALS HEREINAFTER DESCRIBED:

Take notice, that I, A. B., residing at [*giving full statement of residence*], have taken and now have in my possession certain animals [*here describe them fully, giving color or other distinguishing marks*], which were found on or about the day of and more than five days since, upon my inclosed lands [*or, on land owned and occupied by me, doing damage*], and which have not come upon such lands from adjoining lands, where they were lawfully kept, by reason of my refusal or neglect to make or maintain a division fence as required of me by law, and that I claim a lien upon said animals for the damage sustained by me by reason of their so coming upon my said lands and doing damage, and for my reasonable charges, fees, and costs in connection therewith.

Dated , .

1630. Certificate of Fenceviewers as to Charges, etc., Due to Claimant.

We, the undersigned, two of the fenceviewers of the town of , in the county of , do hereby determine and certify as follows, namely, that certain animals [*here describe them fully, giving color or other distinguishing marks*], belonging to , of the town of , having been found upon the inclosed land situate in said town of , owned or occupied by , doing damage [*or, having strayed thereupon*], and having been taken by said A. B., and due proceedings having been thereupon had according to the statute in such case made and provided, and the charges, damages, costs, and fees in such proceedings not having been agreed upon between said A. B. and said C. D., and the amount thereof having been submitted to the undersigned for their adjudication thereupon, and we having duly heard the said A. B. and C. D., and the evidence adduced by them, and having examined the premises in question;

We do hereby adjudge and determine that the said charges, damages, costs, and fees of the said A. B. amount to the sum of dollars.

And we further certify that our fees for our services herein amount to the sum of dollars.

WITNESS our hands and seals this day of , .

CHAPTER LXII.

SUBSCRIPTION PAPERS.

SUBSCRIPTION PAPERS, like all other contracts, require both a party to contract with and a consideration, to make them valid and binding; but, from their simple and informal nature, they are often defective in these respects, and sometimes prove entirely nugatory on this account. The object of the subscription should be clearly stated, the party to whom it is to be paid and the consideration. Where, however, the paper imports a request to the body who are to apply the fund, and they go on and incur liabilities on the faith of the subscription, the consideration may be inferred from the facts; and in such a case, the subscription becomes binding from the time of the acts constituting the consideration.

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1637. Subscription for a Building.¹

WE, the subscribers, in consideration of the premises and of the mutual promises contained herein, agree to pay the sums set opposite our respective names, for the purpose of building a Presbyterian church at Glens Falls; said church to be built on the lot now occupied by the old Presbyterian church in said village. The amount to be subscribed, in cash, is to be \$5,000; the money to be paid to the trustees of said church, or to a building committee to be appointed by the undersigned subscribers. The body of the church to be finished and furnished uniformly; the pews or slips are to be equally assessed, and rented annually; and said assessments and rents to be paid and applied by said trustees in payment for the stated preaching of the gospel in said church and congregation, and expenses of said church.

[Date.]

[Signatures and sums.]

1638. Subscription to the Support of a Clergyman.²

WE, the subscribers, being members of the religious society in , and being desirous of raising a salary for the support of the Reverend S. F., as a minister of the gospel in said society, do, for this purpose, in consideration of the premises and of the mutual promises contained herein, and for the consideration of one dollar received from the trustees of said society, before signing this instrument, promise, covenant, and engage, each one for himself, individually and severally, to and with the said trustees, that we will each pay to the said trustees, or such person as they shall appoint to receive the same, the sums respectively annexed to our names, to be paid annually, so long as the said S. F. shall administer the gospel in said society, and so long as we, the subscribers, shall reside within four miles of the meeting-house of said society, to be by the said trustees ap-

¹ See *Barnes v. Perine*, 12 N. Y. 18.

² It is binding on the subscribers so long as S. F. continues to administer the gospel, and the subscribers to reside within the distance of four miles, and could not be dissolved but

by mutual consent, nor cease to be obligatory until the minister ceased to render the service stipulated. *Religious Society in Whitestone v. Stark*, 7 Johns. 112.

plied for the sole purpose of paying the salary of Mr. S. F. The first annual payment shall be made at the expiration of one year after he shall be installed or ordained in the said society, and in each and every year thereafter. And this instrument shall not be obligatory on us in any manner, until the whole sum subscribed shall amount to the sum of dollars.

[Date.]

[Signatures and sums.]

1639. Subscription to Endow a College.¹

In consideration of the effort by the trustees of College to raise a fund of dollars, and their agreement to receive, hold, and apply such fund as hereinafter provided, we, the subscribers, in consideration of the premises and of the mutual promises contained herein, hereby bind ourselves to pay to the said trustees the sums opposite to our respective names, in four equal annual payments, the first to be made on the day of , . The conditions of the subscriptions are the following:

1. That the moneys collected on it shall be permanently invested as a productive fund, the interest of which shall be applied to the payment of the salaries of the officers.

2. That we shall not be holden to pay the sum subscribed by us unless the aggregate of our subscriptions and of contributions to this object shall, by the day of , , amount to dollars, nor until A. B., of , shall certify that, in his judgment, responsible subscriptions or contributions amounting to dollars shall have been made.

[Date.]

[Signatures and sums.]

1640. Subscription for Construction of Railroad.

WHEREAS, A. S., of New York city, and his associates, propose, by the consolidation of certain railroad companies and franchises now existing in the states of and , to construct a through line of railroad between the city of , and the city of ; and,

WHEREAS, it is to the interest of the merchants and inhabitants of the city of that such railroad should be built;

WE, the undersigned, in consideration of the premises, and of the construction of said railroad, as aforesaid, do hereby agree with each other and with the several signers of any papers similar to this, and with said A. S. and his associates, and with any railroad company or companies that may be formed by them to construct said railroad from said to , that, so far as is practicable, we will send, or cause to be sent, by said railroad, all the freight which we may have or control between said cities of and , or to or from the north of

PROVIDED, HOWEVER, that said freight shall be carried by said railroad, and its connections, upon at least as favorable terms as we may then be able to obtain from any competing railroad.

Dated , .

¹ See *Stewart v. Trustees of Hamilton College*, 1 N. Y. (Comst.) 581.

CHAPTER LXIII.

TRADE-MARKS AND COPYRIGHT.

RULES AND REGULATIONS FOR THE REGISTRATION OF TRADE-MARKS.

A TRADE-MARK is a name, symbol, figure, letter, form or device used by a person, firm or corporation for the purposes of denoting the true source, origin and ownership of the goods, to which the mark, etc., is applied. Its object is two-fold; first, to protect the party using it from competition with inferior articles; and, second, to protect the public from imposition.

Acts of congress, approved respectively March 20, 1905 and May 4, 1906, provide for the general registration of trade-marks, and are substantially as follows:

The owner of a trade-mark used in commerce with foreign nations, or among the several states, or with Indian tribes, if such owner is domiciled within the United States, or resides in or is located in any foreign country which, by treaty, convention or law, affords similar privileges to United States citizens, may obtain registration for such trade-mark by filing in the patent office a written application therefor, stating his name, domicile, location, and citizenship; the class of merchandise and the particular description of goods comprised in such class to which the trade-mark is appropriated; a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade-mark has been used. A description of the trade-mark itself, shall be included, if desired by the applicant or required by the commissioner, provided such description is of a character to meet the approval of the commissioner; also a drawing of the trade-mark, signed by the applicant or his attorney, and a required number of specimens of the trade-mark as actually used, with a fee of ten dollars, and the applicant must otherwise comply with the requirements of the act and the regulations of the commissioner of patents.

The application must be accompanied by a written declaration of the form specified in the law and shown in the forms under this chapter.

No mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade-mark on account of the nature of such mark unless such mark—

(a) Consists of or comprises immoral or scandalous matter.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or any simulation thereof, or of any state or municipality, or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem: Provided, That trade-marks which are identical with a registered or known trade-mark owned and in use by another, and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade-mark owned and in use by another, and appropriated to merchandise of the same descriptive properties, as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers, shall not be registered: Provided, That no mark which consists merely in the name of an individual, firm, corporation or association, not written, printed, impressed or woven in some particular or distinctive manner, or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this act: Provided, further, That no portrait of a living individual may be registered as a trade-mark except by the consent of such individual evidenced by an instrument in writing: And provided further, That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several

states, or with Indian tribes, which was in actual and exclusive use as a trade-mark of the applicant or his predecessors from whom he derived title for ten years next preceding the passage of this act.

If on examination made by the commissioner of patents, the applicant appears entitled to have his trade-mark registered, the mark shall be published at least once in the Official Gazette of the patent office. And within thirty days after such publication, an opposition may be filed by any person believing himself damaged by the registration of the mark.

The registration shall remain in force for twenty years, except that trade-marks previously registered in foreign countries shall cease to be in force when the foreign trade-mark ceases, and in no case shall remain in force for more than twenty years unless renewed. Renewals of twenty years may be had on payment of the renewal fees, but request for renewal must be made not more than six months prior to the expiration of the period of original issue or renewal.

Registered trade-marks may be canceled by the commissioner of patents in certain cases. Appeals are provided for.

Fees on each application for registration are \$10; on an application for renewal, \$10; on filing notice of opposition, \$10; on appeal from the examiner in charge to the commissioner of patents, \$15. Copies of the law governing trade-marks and of the rules of the patent office are furnished upon application to the patent office and should be carefully followed.

Trade-mark treaties have been made with Austro-Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, Japan, Roumania, Russia, Servia and Spain.

RULES AND REGULATIONS FOR THE REGISTRATION OF CLAIMS TO COPYRIGHT.

Copyright under the act of congress entitled: "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, is ordinarily secured by printing and publishing a copyrightable work with a notice of claim in the form prescribed by the statute. Registration can only be made after such publication, but the statute expressly provides, in certain cases, for registration of manuscript works. This registration is now under the charge of the library of congress, copyright office.

The persons entitled by the act to copyright protection for their works are:

(1) The author of the work, if he is: (a) A citizen of the United States, or (b) A resident alien domiciled in the United States at the time of the first publication of his work, or (c) A citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation.*

(2) The proprietor of a work. The word "proprietor" is here used to indicate a person who derives his title to the work from the author. If the author of the work should be a person who could not himself claim the benefit of the copyright act, the proprietor can not claim it.

(3) The executors, administrators or assigns of the above-mentioned author or proprietor.

After the publication of any work entitled to copyright, the claimant of copyright should register this claim in the copyright office. An action for infringement of copyright can not be maintained in court until the provisions with respect to the deposit of copies and registration of such work shall

*Presidential copyright proclamations have been issued securing to the citizens or subjects of the following countries copyright privileges in the United States: Austria, Belgium, Chile, China, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Guatemala, Honduras, Italy, Japan, Luxemburg, Mexico, Netherlands (Holland) and possessions, Nicaragua, Norway, Portugal, Salvador, Spain and Switzerland.

have been complied with. A certificate of registration is issued to the applicant and duplicates thereof may be obtained on payment of the statutory fee of fifty cents.

The act provides that no copyright shall subsist in the original text of any work published prior to July 1, 1909, which has not been already copyrighted in the United States. The works for which copyright may be secured are divided into eleven classes, as follows:

(a) *Books*.—This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term "book" as used in the law includes tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables, etc., single poems, and the words of a song when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopædias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers.

The term "book" can not be applied to—Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and check books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions. Directions on scales or dials, or mathematical or other instruments; puzzles; games; re-buses; labels; wrappers; formulæ on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles. Advertisements or catalogues which merely set forth the names, prices, and places where articles are for sale. Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books. Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as "books" or as "prints" according to the nature of the copyrightable matter.

(b) *Periodicals*.—This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies, etc., which appear regularly at intervals of less than a year; and, generally, periodical publications which would be registered as second-class matter at the post-office.

(c) *Lectures, sermons, addresses, or similar productions, prepared for oral delivery.*

(d) *Dramatic and dramatico-musical compositions, such as dramas, comedies, operas, operettas and similar works.*

The designation "dramatic composition" does not include the following: dances, ballets, or other choregraphic works; tableaux and moving picture shows; stage settings or mechanical devices by which dramatic effects are produced, or "stage business;" animal shows, sleight-of-hand performances, acrobatic or circus tricks of any kind; descriptions of moving pictures or of settings for the production of moving pictures. (These, however, when printed and published, are registrable as "books.")

Dramatico-musical compositions include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung. Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions.

(e) *Musical compositions, including other vocal and all instrumental compositions, with or without words.* But when the text is printed alone it should be registered as a "book," not as a "musical composition."

"Adaptations" and "arrangements" may be registered as "new works" under the provisions of section 6. Mere transpositions into different keys are not expressly provided for in the copyright act; but if published with copyright notice and copies are deposited with application, registration will be made.

(f) Maps.—This term includes all cartographical works, such as terrestrial maps, plats, marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence.

(g) Works of art.—This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented. No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles.

(h) Reproductions of works of art.—This term refers to such reproductions (engravings, woodcuts, etchings, casts, etc.) as contain in themselves an artistic element distinct from that of the original work of art which has been reproduced.

(i) Drawings or plastic works of a scientific or technical character.—This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, etc.

(j) Photographs.—This term covers all positive prints from photographic negatives, including those from moving-picture films (the entire series being counted as a single photograph), but not photogravures, half tones, and other photo-engravings.

(k) Prints and pictorial illustrations.—This term comprises all printed pictures not included in the various other classes enumerated above.

Articles of utilitarian purposes do not become capable of copyright registration because they consist in part of pictures which in themselves are copyrightable, e. g., puzzles, games, rebuses, badges, buttons, buckles, pins, novelties of every description, or similar articles. Postal cards can not be copyrighted as such. The pictures thereon may be registered as "prints or pictorial illustrations" or as "photographs." Text matter on a postal card may be of such a character that it may be registered as a "book." Mere ornamental scrolls, combinations of lines and colors, decorative borders, and similar designs, or ornamental letters or forms of type are not included in the designation "prints and pictorial illustrations." Trade-marks can not be copyrighted nor registered in the copyright office.

Copyright registration may be secured for unpublished and published works.

Unpublished works are such as have not at the time of registration been printed or reproduced in copies for sale, or been publicly distributed. They include: (a) Lectures, sermons, addresses, or similar productions for oral delivery; (b) dramatic and musical compositions; (c) photographic prints; (d) works of art (painting, drawings, and sculpture), and (e) plastic works.

In order to secure copyright in such unpublished works, the following steps are necessary:

(1) In the case of lectures, sermons, addresses, and dramatic and musical compositions, deposit one typewritten or manuscript copy of the work. This copy should be in convenient form, clean and legible, the leaves securely fastened together, and should bear the title of the work corresponding to that given in the application. The entire work in each case should be deposited. It is not sufficient to deposit a mere outline or epitome, or in the case of a play, a mere scenario, or a scenario with the synopsis of the dialogue.

(2) In the case of photographs, deposit one copy of a positive print of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

(3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photographic reproduction.

In each case the deposited article should be accompanied by an application for registration and a money order for the amount of the statutory fee.

Any work which has been registered as an unpublished work, if reproduced in copies for sale or distribution, must be deposited a second time (two copies, accompanied by an application for registration and the statutory fee) in the same manner as is required in the case of works published in the first place.

After publication of the work with the copyright notice inscribed, two complete copies of the best edition of the work must be sent to the copyright office, with a proper application for registration correctly filled out and a money order for the amount of the legal fee. The statute requires that the deposit of the copyright work shall be made "promptly," which has been defined as "without unnecessary delay." It is not essential, however, that the deposit be made on the very day of publication.

Published works are such as are printed or otherwise produced and "placed on sale, sold, or publicly distributed" (*i. e.*, so that all persons who desire copies may obtain them without restriction or condition other than that imposed by the copyright law). Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication. Works intended for sale or general distribution must first be printed with the statutory form of copyright notice inscribed on every copy intended to be circulated.

The ordinary form of copyright notice for books, periodicals, dramatic and musical compositions is "Copyright, 19 (the year of publication), by A. B. (the name of the claimant)." The name of the claimant printed in the notice should be the real name of a living person, or his trade-name if he always uses one (but not a pseudonym or pen name), or the name of the firm or corporation claiming to own the copyright. The copyright notice should not be printed in the name of one person for the benefit of another. The beneficiary's name should be printed in such cases.

In the case of maps, photographs, reproductions of works of art, prints or pictorial illustrations, works of art, models or designs for works of art, and plastic works of a scientific or technical character, the notice may consist of the letter, C, inclosed within a circle, thus ©, accompanied with the initials, monogram, mark, or symbol of the copyright proprietor. But in such case the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work.

The prescribed notice must be affixed to each copy of the work published or offered for sale in the United States. But no notice is required in the case of foreign books printed abroad seeking *ad interim* protection in the United States, as provided in section 21 of the copyright act.

The following works must be manufactured in the United States in order to secure copyright:

(a) All "books" in the English language and books in any language by a citizen or domiciled resident of the United States must be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text of such books be produced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States; and the printing of the text and binding of the book must be performed within the limits of the United States.

(b) All illustrations within a book produced by lithographic process or photo-engraving process and all separate lithographs or photo-engravings must be produced by lithographic or photo-engraving process wholly performed within the limits of the United States, except when the subjects represented in such illustrations in a book or such separate lithographs or photo-engravings "are located in a foreign country and illustrate a scientific work or reproduce a work of art."

Books by foreign authors in any language other than English are not required to be printed in the United States.

In the case of books printed abroad in the English language an *ad interim* term of copyright of thirty days from registration made in the copyright office within thirty days after publication abroad may be secured; but in order to extend the copyright to the full term of protection, an addition of the work must be published in the United States within the thirty days *ad interim* term, printed or produced within the limits of the United States as required in section 15 of the copyright act.

The application for copyright registration required to be sent with each work must state the following facts, without which no registration can be made:

- (1) The name and address of the claimant of copyright.
- (2) The nationality of the author of the work.
- (3) The title of the work.
- (4) The name and address of person to whom certificate is to be sent.
- (5) In the case of all published works the actual date (year, month, and day) when the work was published.

In addition, it is desirable that the application should state for record the name of the author. If, however, the work is published anonymously or under a pseudonym and it is not desired to place on record the real name of the author, this may be omitted. In the case of works made for hire, the employer may be given as the author. By the nationality of the author is meant citizenship, not race; a person naturalized in the United States should be described as an American. An author, a citizen of a foreign country having no copyright relation with the United States, may secure copyright in this country, if at the time of publication of his work he is a permanent resident of the United States. The fact of such permanent residence in the United States should be expressly stated in the application. Care should be taken that the title of the work, the name of the author, and the name of the copyright claimant should be correctly stated in the application, and that they should agree exactly with the same statements made in the work itself.

A copy of the copyright law, and of the rules of the United States supreme court governing suits upon copyrights, and copies of the rules of the copyright office, are published in pamphlet form, and can be obtained upon application, to the library of congress, copyright office, and should be consulted. The copyright office also issues the following application forms, which will be furnished on request, and should be used when applying for copyright registration:

- A1. Book by citizen or resident of the United States.
- A1. New ed. New edition of book by citizen or resident of the United States.
- A1 for. Book by citizen or resident of a foreign country, but manufactured in the United States.
- A2. Edition printed in the United States of a book originally published abroad in the English language.
- A3. Book by foreign author in foreign language.
- A4. Ad interim. Book published abroad in the English language.
- A5. Contribution to a newspaper or periodical.
- B1. Periodical. For registration of single issue.
- B2. Periodical. General application and deposit.
- C. Lecture, sermon, or address.
- D1. Published dramatic composition.
- D2. Dramatic composition not reproduced for sale.
- D3. Dramatico-musical composition.
- E1. Published musical composition.
- E2. Musical composition not reproduced for sale.
- F. Published map.

- G. Work of art (painting, drawing, or sculpture); or model or design for a work of art.
- H. Reproduction of a work of art.
- I. Drawing or plastic work of a scientific or technical character.
- J¹. Photograph published for sale.
- J². Photograph not reproduced for sale.
- K. Print or pictorial illustration.

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The following forms illustrate the manner of preparing papers for applications for registration of trade-marks. Applicants will find their business facilitated by following them.

1641. Petition.

To the Commissioner of Patents:

The undersigned presents herewith a drawing and five *specimens* of his trade-mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided.

Dated *June 15, 1906.*
(Date of execution.)

JOHN DOE.
(Signature of applicant.)

1642. Statement for an Individual.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, *John Doe*, a citizen of the United States of America, residing at *Philadelphia, county of Philadelphia, State of Pennsylvania*, and doing business at *No. 1300 Chestnut street, in said city*, have adopted and used the trade-mark shown in the accompanying drawing for *canned fruits and vegetables*, in class No. 46, *Foods and ingredients of foods*.

The trade-mark has been continuously used in my business (*and in the business of my predecessor, Richard Roe*) since *February 1, 1899*.

The trade-mark is applied or affixed to the goods, or to the packages containing the same, by *placing thereon a printed label on which the trade-mark is shown*.

JOHN DOE.
(Signature of applicant.)
(First name must be given in full.)

1643. Declaration for an Individual.

State of *Pennsylvania*,
County of *Philadelphia*, } *ss:*

John Doe, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he believes the foregoing statement

¹ If applicant has had no predecessors, omit this clause.

is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by him in commerce among the several States of the United States (and between the United States and foreign nations or Indian tribes, and particularly with *England and Germany*¹); that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.
Or facsimiles.)

JOHN DOE.

(Signature of applicant.)

Subscribed and sworn to before me, a *notary public*, this *15th* day of *June*, 1906. (Official title.) (Date of execution.)

(L. S.)

RICHARD JONES.

Notary Public.
(Official title.)

1644. Statement for a Firm.

TO ALL WHOM IT MAY CONCERN:

Be it known that we, *John Doe & Company*, a firm domiciled in *New York*, county of *New York*, State of *New York*, doing business at No. *36* *Fulton street*, in *said city*, and composed of the following members, *John Doe*, *Richard Roe*, and *Henry Poe*, citizens of the *United States of America*, have adopted and used the trade-mark shown in the accompanying drawing for *surgical bandages*, in class No. *44*, *Dental, medical, and surgical appliances*.
(Firm name.)
(Domicile.)
(Business address.)
(Names of members of the firm.)
(Citizenship of members of the firm.)
(Particular description of goods.)
(Number and title of class—see classification.)

The trade-mark has been continuously used in our business (and in the business of our predecessors, *Doe & Roe*²) since *January 1, 1902*.
(Name of predecessors, if any.)
(Earliest date use.)

The trade-mark is applied or affixed to the goods, or to the packages containing the same, by *placing thereon a printed label on which the trade-mark is shown*.
(Or state other mode or modes of application.)

JOHN DOE & COMPANY,

(Firm name.)

RICHARD ROE.

(Signature of a member of the firm.)

A Member of the Firm.

1645. Declaration for a Firm.

State of *New York*,
County of *New York*. } ss:

Richard Roe, being duly sworn, deposes and says that he is a member of the firm, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said firm is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said firm in commerce among the several States of the United States (and between the United States and foreign nations or Indian

¹If applicant does not have commerce with foreign nations or Indian tribes, this clause should be omitted.

²If applicant has had no predecessors, omit this clause.

tribes, and particularly with *France and Spain*¹; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the *specimens* show the trade-mark as actually used upon the goods.

(Or facsimiles.)

RICHARD ROE.
(Signature of affiant.)

Subscribed and sworn to before me, a *notary public*, this 15th day of January, 1906.

(Date of execution.)

[L. s.]

HARRY BROWN,
Notary Public.
(Official title.)

1646. Statement for a Corporation or Association.

TO ALL WHOM IT MAY CONCERN:

Be it known that *Union Manufacturing Company*, a corporation² duly organized under the laws of the *State of Maine*, and located in the city of

(Name of applicant.)

(State or country under the laws of which organized.)

Brunswick, county of Cumberland, in said State, and doing business at No.

(Location of corporation.)

326 Atlantic Avenue, in the city of Boston, State of Massachusetts, has

(Business address.)

adopted and used the trade-mark shown in the accompanying drawing for arc and incandescent electric lamps and electric heaters, in Class No. 21,

(Particular description of goods.)

Electrical apparatus, machines, and supplies.

(Number and title of class—see classification.)

The trade-mark has been continuously used in the business of said corporation,³ (and in the business of its predecessors, *John Doe Company*,³)

(Name of predecessors, if any.)

since *January 30, 1898*.

(Give earliest date of use.)

The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown.

(Or state other mode or modes of application.)

UNION MANUFACTURING COMPANY,

(Name of applicant.)

By JOHN DOE, *Secretary*.

(Signature of officer.) (Official title.)

1647. Declaration for a Corporation or Association.

State of *Massachusetts*, }
County of *Suffolk*, } ss:

John Doe, being duly sworn, deposes and says that he is the *secretary* of

(Official title.)

the *corporation*,⁴ the applicant named in the foregoing statement; that he

believes the foregoing statement is true; that he believes said *corporation*² is

the owner of the trade-mark sought to be registered; that no other person,

firm, corporation, or association, to the best of his knowledge and belief,

has the right to use said trade-mark in the United States, either in the identical

form or in any such near resemblance thereto as might be calculated

to deceive; that said trade-mark is used by said *corporation*⁴ in commerce

among the several States of the United States (and between the United States

and foreign nations or Indian tribes and particularly with *Italy and France*¹);

(Names of foreign nations or Indian tribes.)

that the description and drawing presented truly represent the trade-mark

¹ If applicant does not have commerce with foreign nations or Indian tribes, this

clause should be omitted.

² In case applicant is a firm, corporation, or association, the declaration

should be modified accordingly.

³ If applicant has had no predecessors, omit this clause.

⁴ If the applicant be an association, the word "association" should be sub-

stituted for the word "corporation."

sought to be registered; and that the *specimens* show the trade-mark as actually used upon the goods. (Or facsimiles.)

JOHN DOE.
(Signature of affiant.)

Subscribed and sworn to before me, a *notary public*, this *20th* day of
(Official title.) (Date of execution.)
February, 1906.
WILLIAM GBANE,
[L. s.] Notary Public.
(Official title.)

1648. Declaration for Applicants Under the Ten-Year Proviso.

State of *Connecticut*, }
County of *Fairfield*, } ss:

Richard Roe, being duly sworn, deposes and says that he is the applicant (Name of applicant.) named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said mark is used by him in commerce among the several States of the United States (and between the United States and foreign nations, or Indian tribes, and particularly with *Russia and Turkey*¹); (Names of foreign nations or Indian tribes.) that the description and drawing presented truly represent the mark sought to be registered; that the *specimens* show the mark as actually used upon the goods; and that the mark has been in actual use as a trade-mark of the applicant (and applicant's predecessors from whom title was derived²) for ten years next preceding the passage of the act of February 20, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

RICHARD ROE.
(Signature of affiant.)

Subscribed and sworn to before me, a *notary public*, this *15th* day of
(Official title.) (Date of execution.)
February, 1906.
CHARLES MASON,

[L. s.]

Notary Public.
(Official title.)

1649. Declaration for Foreigner.

London, England, }
United States Consulate, } ss.

John Doe, being duly sworn, deposes and says that he is the applicant named (Name of affiant.) in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; (that said trade-mark has been registered in *England*, on *June 1, 1900*, No. *49316*;³) that the description and (Name of country.) (Date.) (Number of registration.)

¹ If applicant does not have commerce with foreign nations or Indian tribes, this clause should be omitted.

² If applicant has had no predecessors, this clause should be omitted.

³ If the trade-mark has not yet been registered, but an application for registration has been filed in the country where applicant resides or is located, this clause should be omitted and the following substituted therefor:

"that an application for registration of said trade-mark was filed by him on the *20th day of January, 1900*, in *England*;"

(Date of filing) (Name of country.)

drawing presented truly represent the trade-mark sought to be registered; and that the *specimens* show the trade-mark as actually used upon the goods.
(Or facsimiles.)

JOHN DOE,
(Signature of affiant.)

Subscribed and sworn to before me, a *United States consul*, this *20th* day of *January*, 1906.
(Official title.) (Date of execution.)

RICHARD JONES,
United States Consul.
(Official title.)

[SEAL.]

1650. Statement for an Individual Under Section 3 of the Act of May 4, 1906.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, *Richard Roe*, a *subject of the King of England*, residing at *London, England*, and doing business at *No. 26, Threadneedle street, in said city*, and having a manufacturing establishment at *Hartford, State of Connecticut*, have adopted and used the trade-mark shown in the accompanying drawing for the following products of such manufacturing establishment, namely, *rubber boots and shoes*, in *Class No. 39, Clothing*.

(Particular description of goods.) (Number and title of class—see classification.)
The trade-mark has been continuously used in my business (*and in the business of my predecessor*,¹ *John W. Brown*) since *January 1, 1901*.

(Name of predecessor, if any.) (Earliest date of use.)
The trade-mark is applied or affixed to the goods, or to the packages containing the same, by *placing thereon a printed label on which the trade-mark is shown*.
(Or state other mode or modes of application.)

RICHARD ROE,
(Signature of applicant.)

1651. Declaration for Foreigners Under Section 3 of the Act of May 4, 1906.²

United States Consulate, }
London, England, } ss:

Richard Roe, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by him in commerce among the several States of the United States (and between the United States and foreign nations or Indian tribes, and particularly with *England and Germany*³); that the description and drawing presented truly represent the trade-mark sought to be registered; that the *specimens* show the

(Or facsimiles.)
trade-mark as actually used upon the goods; that his manufacturing establishment is located at *Hartford, State of Connecticut*; and that the goods for which the trade-mark is claimed in this application are the products of such establishment.

RICHARD ROE,
(Signature of affiant.)

¹ If applicant has no predecessors this clause should be omitted.

² In case applicant be a firm, corporation, or association, the statement or declaration should be modified accordingly.

³ If applicant does not have commerce with foreign nations or Indian tribes, this clause should be omitted.

Subscribed and sworn to before me, a *United States consul*, this *15th* day of *June, 1906*.
(Date of execution.)

[SEAL.]

RICHARD JONES.
United States Consul.
(Official title.)

1652. Notice of Opposition.¹

To THE COMMISSIONER OF PATENTS:

In the matter of an application for the registration of a trade-mark for *sewing machines*, Serial No. *1906*, filed *April 15, 1906*, by *John Doe*, of *San Francisco, Cal.*, which was published on page *1746*, Vol. *120*, No. *13*, (Particular goods.) (Number and date of application.) (Name of applicant.) (Location or residence of applicant.) (Page, volume, number of the Official Gazette of *June 13, 1906*, I, *Richard Roe*, residing at No. *12* and date of the Official Gazette.) (Name of party opposing.) (Residence or location of party opposing.) *Clark street, city of Chicago, State of Illinois*, believe I would be damaged by such registration and I hereby give notice of my intention to oppose the registration of said trade-mark.

The grounds for opposition are as follows:
(Here state the grounds for opposing registration.)

RICHARD ROE.
(Signature of opposing party.)

State of *Illinois*, }
County of *Cook*, } ss:

On this *23d* day of *June, 1906*, before me, a *notary public*, in and for *Cook County, state of Illinois*, personally appeared *Richard Roe*, who, being by me duly *sworn*, (Or affirmed.) deposes and says that he has read the foregoing notice of opposition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

CHARLES KINGMAN,
Notary Public.
(Official title.)

1653. Application for Cancellation of Trade-Mark.²

To the Commissioner of Patents:

In the matter of trade-mark No. *1898*, registered *May 23, 1906*, by *Richard Roe*, of the city of *Portland, county of Cumberland, State of Maine*, I, *John Doe*, residing at No. *113 Fayette street, in the city of Baltimore, State of Maryland*, deem myself injured by said registration and I hereby apply for the cancellation thereof.

The grounds for cancellation are as follows:
(Here state the grounds for cancellation.)

JOHN DOE.
(Signature of party applying for cancellation.)

State of *Maryland*, }
City of *Baltimore*. } ss:

On this *26th* day of *June, 1906*, before me, a *notary public*, in and for *city of Baltimore, State of Maryland*, personally appeared *John Doe*, who, (Name of party applying for cancellation.)

¹ If the opposing party be a firm, corporation, or association, the notice of opposition should be modified accordingly.

² If the party applying for cancellation be a firm, corporation, or association, the application for the cancellation should be modified accordingly.

being by me duly *sworn*, deposes and says that he has read the foregoing application for cancellation and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[L. s.]

JOHN JONES,

Notary Public.

(Official title.)

1654. Classification of Merchandise under the Act of May 4, 1906.

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, horse equipments, portfolios, and pocketbooks.
4. Abrasive, detergent, and polishing materials.
5. Adhesives.
6. Chemicals, medicines, and pharmaceutical preparations.
7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments and projectiles.
10. Fertilizers.
11. Inks and inking materials.
12. Construction materials.
13. Hardware and plumbing and steamfitting supplies.
14. Metals and metal castings and forgings.
15. Oils and greases.
16. Paints and painters' materials.
17. Tobacco products.
19. Vehicles, not including engines.
20. Linoleum and oiled cloth.
21. Electrical apparatus, machines, and supplies.
22. Games, toys, and sporting goods.
23. Cutlery, machinery, and tools, and parts thereof.
24. Laundry appliances and machines.
25. Locks and safes.
26. Measuring and scientific appliances.
27. Horological instruments.
28. Jewelry and precious-metal ware.
29. Brooms, brushes, and dusters.
30. Crockery, earthenware, and porcelain.
31. Filters and refrigerators.
32. Furniture and upholstery.
33. Glassware.
34. Heating, lighting, and ventilating apparatus, not including electrical apparatus.
35. Belting, hose, machinery packing, and nonmetallic tires.
36. Musical instruments and supplies.
37. Paper and stationery.
38. Prints and publications.
39. Clothing.
40. Fancy goods, furnishings, and notions.
41. Canes, parasols, and umbrellas.
42. Knitted, netted, and textile fabrics.
43. Thread and yarn.
44. Dental, medical, and surgical appliances.
45. Beverages, nonalcoholic.
46. Foods and ingredients of foods.
47. Wines.
48. Malt extracts and liquors.
49. Distilled alcoholic liquors.
50. Merchandise not otherwise classified.

NOTE.—Class 18 was abolished February 24, 1909.

CHAPTER LXIV.

TRUSTS.

A TRUST is a confidence reposed in one person, who is termed the trustee, for the benefit of another, who is called the *cestui que trust*; and it is a confidence respecting property, which is thus held by the former for the benefit of the latter. Out of this confidence arise two estates in the property which is the subject of it; a legal estate in the trustee, which consists essentially in obligation; and an equitable estate in the *cestui que trust*, which consists in right and beneficial enjoyment.

By the provisions of the statutes of the state of New York, which have been in substance adopted in some other states, all trusts in *real property*, except trusts resulting from implication of law, and except also certain enumerated express trusts, are abolished; and every person entitled to the possession of land, and to the receipt of its rents and profits, is declared to have a legal estate therein commensurate with his beneficial interest. Express trusts are therein defined, and the purposes for which they may be created, enumerated; and minute provisions are inserted to guard them and prevent their being abused to the injury of creditors and *bona fide* purchasers. Trusts which are not authorized as trusts by these provisions, operate, if at all, as powers in trust. The objects for which express trusts in lands may be created are thus defined by the statute: 1. To sell lands for the benefit of creditors. 2. To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon. 3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the provisions of law relating thereto. 4. To receive the rents and profits of real property, and to accumulate the same, for purposes and within the limits prescribed by law.¹

A trust to receive the rents, profits, and income of property, and to *pay them to the cestui que trust*, is valid as a trust to *apply them to his use*, within the statute.

Express trusts of *personal estate* may be created for any purpose which is not illegal, for the statutes have not defined the purposes for which they may be created.

By the Statute of Frauds, as generally enacted in this country, *assignments* of property in trust must be in writing, subscribed by the party or his agent.

In other cases than assignments or conveyances in trust, it is not essential to the *creation* of a trust, even in lands, that a deed or written instrument be executed.

A person in the legal possession of money or property, acknowledging a trust, becomes from that time a trustee, if the acknowledgment is founded on a valuable or meritorious consideration. But to render the obligation of a trust in real property enforceable, it must be manifested or declared by some writing signed by the trustee. And although it is not essential that the writing by which the trust is manifested and proven should be in any particular form, the nature of the trust, and terms and conditions of it, must sufficiently appear, so that the court may not be called upon to execute the trust in a manner different from that intended.

Trusts are usually created by ASSIGNMENTS FOR CREDITORS; DEEDS OR WILLS, and for the forms appropriate to this purpose, the reader is referred to those chapters.

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¹ Real Property Law, § 96; Birdseye, C. & G. Cons. Laws, 1909, p. 4974.

1655. Declaration of a Trust in Personal Property.

I, A. B., of _____, in consideration of _____, hereby acknowledge and declare, that I am possessed of [ten shares of the capital stock of the C. D. Company, numbered from one to ten, inclusive], in trust, and for the only benefit and advantage of Y. Z., of _____, his executors, administrators, and assigns, the same having been purchased with the moneys of the said Y. Z., and my name, as to the said shares, and all the income thereof, from henceforth to grow due or accrue, is used only in trust for the said Y. Z. And I, for myself, my executors and administrators, hereby covenant with the said Y. Z., his executors, administrators, and assigns, that I and they shall and will, at any time hereafter, at the request and costs of the said Y. Z., his executors, administrators, and assigns, assign and transfer the said shares to him, or them, or order. [Signature.]

[Date.]

1656. Declaration of Trust in Lands.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., OF _____, SEND GREETING:

WHEREAS, C. D., of _____, has, by his deed bearing even date herewith, for the consideration of _____ dollars, granted and conveyed to me in fee simple, all [etc., here insert description], as by said deed will more fully appear; and,

WHEREAS, I have this day executed and delivered to said C. D. a mortgage upon said premises, as collateral security for the payment of my bond, conditioned for the payment of _____ dollars [here state terms], to secure a part of the consideration money expressed in the said deed.

Now, KNOW YE, that I, the said A. B., do, by these presents, make known, admit, and declare that said premises were so conveyed to me, and that I now hold, and will continue to hold, the same, in trust only, for the use and benefit of Y. Z., a son and heir-at-law of _____, deceased, his heirs, executors, and administrators, and that I have no beneficial interest therein, except what may arise by legal or equitable implication from the circumstance of my having executed the said bond and mortgage. And I do further admit, that the residue of the consideration money expressed in said deed to me — to wit, the sum of _____ dollars — was paid by W. X., _____, for the benefit of said Y. Z. And I do, for myself, my heirs, executors, and administrators, covenant and agree to and with said W. X. and Y. Z., and each of them, and with their and each of their executors, administrators, and assigns, that I, or my heirs, shall and will convey the said premises, by a good and sufficient deed, to the said Y. Z., or his assigns, as he or they may direct or require, whenever and as soon as the said mortgage, so executed by me, shall have been paid off and discharged, or otherwise fully secured to me, and that free, clear, and discharged of and from all and every incumbrance thereon by me or my heirs. And that I, or my heirs, shall not do, or knowingly suffer or permit, any act, deed, matter, or thing, whereby said premises can, shall, or may be in anywise impaired, injured, or incumbered, in title, interest, charge, estate, or otherwise, however.

IN WITNESS [etc., as in Form 1601].

1657. Trust for Purchase Money.

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, P. W., and H. P., his wife, of county, in the state of , have recently, by certain deeds of conveyance, bargained, sold, and conveyed to us, S. M. and W. W., both of the city of N., in the county of , and state of , certain lands, situate in the county of , in the state of , that is to say — [*here insert description.*]

NOW, THEREFORE, these presents are to declare and make known, and we, the said S. M. and W. W., do hereby declare and make known to all whom it may concern, that the purchase money of the said lands was not paid wholly by us, but was paid and contributed as follows, that is to say: one-fourth part thereof by A. P., of , in the county of , state of ; one-fourth part thereof by the said W. P., of , in the county of , in the state of ; one-fourth part thereof by the said S. M.; and the remaining fourth part thereof by the said W. W. And we do hereby further declare and make known that we do hold the said lands in trust for ourselves, and the said A. P. and W. P., their heirs and assigns, in the proportions above mentioned — that is to say — one undivided fourth part thereof in trust for the said A. P.; one undivided fourth part thereof in trust for the said W. P.; one undivided fourth part thereof in trust for the said S. M.; and one undivided fourth part thereof in trust for the said W. W., for them, their heirs and assigns, respectively.

And we do hereby further declare and make known, that in the management, disposal, and conveyance of the said lands, or any part thereof, we are to be governed by the expressed wishes of a majority in interest of the said shareholders, or their heirs or assigns, the shareholders for the time being; and that we are not to sell or dispose of any of said lands without the consent of such majority in interest. This clause, however, is not intended to prevent each or any shareholder from disposing of his own undivided interest in any manner he shall see fit.

And we do hereby further declare and make known, that all proceeds and profits arising or to arise from the said lands, or from any part of the same, are to be divided between the said shareholders, their heirs and assigns, for the time being, in the manner and proportions above expressed.

IN WITNESS WHEREOF, we have hereto set our hands and seals, the day of in the year of our Lord one thousand nine hundred and .

Signed, sealed, and delivered in presence of [*Signatures and seals.*]

STATE OF , }
County of , } ss.

Be it remembered that on this day of , in the year of our Lord one thousand nine hundred and , before me, , a master in chancery of the state of , personally appeared S. M. and W. W., who I am satisfied are the grantors in the within deed of conveyance named, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

Master in Chancery of the State of .

CHAPTER LXV.

UNDERTAKINGS.

By the provisions of the County Law of the state of New York, §§ 140, 160, 180, 200, 221, 231; (Birdseye, C. & G. Laws, 1909, pp. 780, 790, 797, 807, 816, 817), the various county officers are required to give undertakings for the faithful discharge of their duties. Every such undertaking is required to be executed by the officer or person in whose behalf it is given and his sureties, and duly acknowledged or proven and certified, and the approval indorsed thereon. Regardless of the form of the undertaking, the parties executing the same are jointly and severally liable for damages resulting by reason of a breach. The sureties are to be examined under oath, must be freeholders of the state, and be jointly worth over and above their debts and liabilities at least double the sum of the undertaking. The official bonds on undertaking shall be recorded in books especially provided for the same, and the county clerks are entitled to fees for recording. In many cases, undertakings are now used where formerly bonds were required.

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1658. Undertaking of County Treasurer.

WHEREAS, the undersigned, A. B., of _____, was duly elected treasurer of the county of _____ [or, was duly appointed by the board of supervisors, or, by the governor, *etc.*, treasurer of the county of _____], * on the _____ day of _____, 19 _____ :

Now, THEREFORE, the said A. B., principal, and C. D., of _____, E. F., of _____, and G. H., of _____, as sureties, do hereby jointly and severally undertake, to and with the county of _____, in the sum of _____ dollars, that the said A. B. shall and will faithfully execute the duties of his office as treasurer of the county of _____, and shall and will pay over according to law, and account for all moneys, property, and securities which shall come into his hands as such treasurer, and render a just and true account thereof to the board of supervisors of said county when required, and obey all orders and directions of a competent court relating thereto.

IN WITNESS, ETC.

[Signatures and seals.]

In presence of

1659. Undertaking of County Clerk.

[As in Form No. 1658, to *, and from thence as follows:] county clerk of the said county, on the _____ day of _____, 19 _____

Now, THEREFORE, WE, the said A. B. and I. J., of, *etc.*, and K. L., of, *etc.*, do hereby, jointly and severally undertake, pursuant to law, in the sum of _____ dollars, that said A. B., shall and will faithfully execute and discharge the duties of county clerk of said county, and account for all moneys deposited with him, pursuant to law, or the order of any court, or by his

predecessor in office, and pay them over as required by law, or directed by such order.

IN WITNESS, ETC.

[Signatures and seals.]

In presence of

1660. Undertaking of Sheriff.

[As in Form No. 1658, to *, and from thence as follows:] sheriff of the county of _____, on the _____ day of _____, 19 _____ :

Now, THEREFORE, WE, the said A. B. and I. J., of, etc., and K. L., of, etc., do hereby jointly and severally undertake to and with the said county of _____, that said A. B. will, in all things, perform and execute the office of sheriff of said county, during his continuance therein, without fraud or deceit.

IN WITNESS, ETC.

[Signatures and seals.]

In presence of

[Approval by county clerk.]

1661. Undertaking of District Attorney.

[As in Form No. 1658, to *, and from thence as follows:] district attorney of the county of _____, on the _____ day of _____, _____ :

Now, THEREFORE, WE, the said A. B. and I. J., of, etc., and K. L., of, etc., do hereby jointly and severally undertake, pursuant to statute, with said county, in the sum of _____ dollars, that said A. B. will faithfully account for and pay over, according to law, or as the court may direct, all moneys that may come into his hands as such district attorney.

IN WITNESS, ETC.

[Signatures and seals.]

[Approval by county judge.]

1662. Undertaking of Superintendent of Poor.

[As in Form No. 1658, to *, and from thence as follows:] a superintendent of the poor of the county of _____ :

Now, THEREFORE, WE, A. B., I. J., of, etc., and K. L., of, etc., do hereby undertake, pursuant to law with said county, that the said A. B., will faithfully discharge the duties of his office as such superintendent of the poor, and pay, according to law, all moneys that shall come into his hands as such superintendent, and render a just and true account thereof to the board of supervisors of his said county.

IN WITNESS, ETC.

[Signatures and seals.]

[Approval, by supervisors if in session; otherwise by county judge.]

1663. Undertaking of Surrogate.

[As in Form No. 1658, to *, and from thence as follows:] surrogate of the county of _____, on the _____ day of _____, _____ :

Now, THEREFORE, WE, A. B. and I. J., of, etc., and K. L., of, etc., do hereby undertake, pursuant to statute, that the said A. B. will faithfully perform his duties as such surrogate, and apply and pay over all moneys and effects that may come into his hands as such surrogate in the execution of his office.

IN WITNESS, ETC.

[Signatures and seals.]

In presence of

CHAPTER LXVI.
WARRANTS.

A WARRANT is a written authority from a court or magistrate authorizing and directing the officer to whom it is addressed to do some act. At common law, a seal is deemed essential to a valid warrant; but the statutes often authorize warrants in particular cases without seal. A warrant should be addressed to some officer, but it may designate him by name, or may be directed to any of several officers of a class.

Various forms of warrants adapted to particular proceedings will be found in their places in other chapters.

Payments of money by cities and other municipal and public corporations are usually made by warrants. These are in the nature of ordinary bank checks, but contain, in addition to the usual form of checks, references to the particular funds against which and the law under which the warrants are drawn and the countersignatures of the proper auditing officials. A form used by the city of New York is given below.

1664. Warrant for the Payment of Money

| | | | | | | | |
|--|-----------|----|---|---|----------------|--|------------------|
| Department of Borough of Supplies and Repairs. CHAP. 189 LAWS OF | Register. | \$ | A | THE | OF THE CITY OF | No. | |
| | | | | | | , 189 | |
| | | | | Pay to | | | or order |
| | | | | for | | | Dollars |
| | | | | | | Voucher Rec'd | |
| | | | | Countersigned, | | | |
| | | | | | [SEAL] | | |
| | | | | Chief Clerk for | | | Comptroller. |
| | | | | This warrant is to be paid only by check on the | | | treasury, signed |
| | | | | by the | | to the order of the payee above named. | |

THE NATIONAL CITY BANK OF
PAY OUT OF
THE TREASURY

the amount of the above warrant to the order of the payee named therein.

CHAPTER LXVII.
WILLS.

THE POWER to make wills and mode of executing them vary somewhat in the different states.

At common law, all persons except infants, married women, and persons of insufficient mind, may make wills of real or personal property; and infants of the age of fourteen, if males, and twelve, if females, may make wills of personal property. But this rule has been generally modified by statute.

In New York, the statutes are to the effect that all persons except idiots, persons of unsound mind, and infants, may devise their real estate; and that males of the age of eighteen, and females of the age of sixteen, of sound mind and memory, may bequeath their personal estate, thus increasing the restriction which the common law laid upon infants, but removing the disability of married women.

Unsoundness of mind does not absolutely disqualify a person. If there is a sufficient degree of mental capacity to exercise the power of legal choice, or if there are lucid intervals, in one of which the will is made, or if the insanity relates only to special subjects not within the scope of the testamentary act, the will may be sustained, if intelligent action in making it is shown.

A gift of real property is termed a devise: a gift of personal property, a bequest or legacy.

All persons may take personal property by bequest, and all persons capable in law of holding real property may take real property by devise.

Corporations, however, cannot take real property by devise, unless they are specially authorized to do so by their charters or other laws. And by statute in New York, it is provided that, no person having a husband, wife, child, or parent, shall devise or bequeath to any benevolent, charitable, literary, scientific, religious, or missionary society, association, or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of debts; and such devise or bequest shall be valid to the extent of one-half and no more.

Form.—No particular words are necessary to constitute a will. With an exception in favor of soldiers and sailors, who from necessity the law allows to make wills verbally—called nuncupative wills—there must be a written statement of the testator's wish, signed by him. Any statement, however, which makes the testamentary character apparent, is sufficient to give the instrument the character of a will.

In no case does a will have any operation until the testator's death. And it may be made upon condition, so that even then it will not take effect except under the circumstances specified. Two persons may make a conjoint or mutual will.

It is very common to commence wills with a formal preamble, reciting the testator's capacity to make a will, and the feelings which move him to the act. These phrases are not, however, of any legal efficacy, and may be inserted or not at pleasure.

Execution.—As to the manner of the execution of wills, the law is precise and stringent. The statutes enacted in the United States generally require that wills must be signed in the presence of two witnesses, and in many of the states three witnesses are required. But in a few states an exception to this rule is made where the will is wholly in the handwriting of the testator, especially if it be found among his papers, or disposes only of personal property. A seal is usual, but is not always required by the statutes, and when not so required is not necessary to the validity of the will, except the will contain an appointment in execution of a power requiring a seal. A mark may be a sufficient signature for the testator or for a witness; but it is preferable to have a witness who can write his name.

In general, a beneficial devise or bequest to a subscribing witness is void, unless there are the requisite number of other competent subscribing witnesses, so that the will is proved without resort to the testimony of the interested witness.

It is usual and proper, but not essential, to write at the end of the will, below or at one side of the testator's signature, a statement of the place, time, purpose, and circumstances of the signatures and execution, and to let the witnesses sign below. This statement is called the attestation clause. The advantage of such a statement is in facilitating the probate of the will. If a witness has no recollection of his attesting the will, but recognizes his name under such a statement as written by himself, and testifies that he would not have written it there had he not known the statement to be true, the courts will generally receive this as supplying his defect of memory.

The attestation must, except in a few states, be in the presence of the testator, but need not necessarily be in the same room, if he is so placed as to see the act. Against the name of every witness his residence or address should be written. In some of the states this is required by law, and in all cases it is convenient; but the absence of this, even where it is required, does not invalidate the will.

The rules prescribed by statute in the various states, for the attestation of wills, are stated in alphabetical order at the end of the chapter.

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I. WILLS AND SPECIAL CLAUSES.

1665. Short Form.¹

The will of A. B., of _____, [merchant].

1. I give, devise, and bequeath all my property, both real and personal, to C. D. [revoking all former wills].

2. I appoint E. F. the executor of this will.

[Date.]

[Signature.]

[Signatures of witnesses, with or without attestation clause, for which see Form 1705.]

1666. A Will Bequeathing Several Legacies, and Appointing a Residuary Legatee.

I, A. B., of _____, [merchant], declare this to be my last will and testament.

1. I bequeath to my wife, C. B., all the fixtures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, chattels, and effects (other than money or securities for money), which shall at my death be in or about my dwelling-house and premises at _____.

2. I bequeath to my said wife the sum of _____ dollars, to be paid to her within one month after my death, without interest.

3. I also give and bequeath to my said wife the sum of _____ dollars.²

4. I also bequeath the following legacies to the several persons hereafter named: To my nephew, E. F., the sum of _____ dollars; to my cousin, G. H., the sum of _____ dollars; and to my friend, J. K., the sum of _____ dollars [and so on with other pecuniary legacies].

5. I also bequeath to each of my domestic servants who shall be living with me at the time of my death in the capacity of [state the description of servants to whom the legacies are to be given], one year's wages, in addition to what may be due to them at that time.

6. All the rest, residue, and remainder of my real and personal estate, I devise and bequeath to R. S., his heirs, executors, administrators, and assigns, absolutely forever.

7. I appoint T. U. and V. W. executors of this my will.

IN WITNESS [etc., as in Form 1705.]

1667. A Will of Real and Personal Estate.

I, A. B., of the town of _____, in the county of _____, and state of _____, [merchant], declare this to be my last will and testament:

1. I give and bequeath to my wife, C. B., _____ dollars, to be received by her in lieu of dower.

2. To my son, E. B., _____ dollars [which said several legacies I direct to be paid within _____ after my decease].

3. I give and devise to my son, E. B. aforesaid, his heirs and assigns, all

¹ For another and very usual form of commencing a will, see Form 1701.

² The object of leaving two legacies to the wife is, that the executor will probably be able to ascertain in a short time whether the estate be solvent, and may then have the

means of paying the wife a small legacy sufficient for current expenses, although he might not be able to pay the second, which may be made sufficient for a permanent provision for the wife.

[*here designate the property*], together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To HAVE AND TO HOLD the premises above described to the said E. B., his heirs and assigns forever.

4. I give and devise all the rest, residue, and remainder of my real property, of every name and nature whatsoever, to my said daughter, M. B. [and my daughter, O. B., to be divided equally between them, share and share alike].

5. I give and bequeath all the rest, residue, and remainder of my personal property, of what nature or kind soever, to my said wife, C. B.

6. I hereby appoint E. B. the sole executor of this will, revoking all former wills by me made.

IN WITNESS [*etc., as in Form 1705.*]

1668. Pecuniary Legacy.

I bequeath to my said wife the sum of dollars [to be paid to her within month after my death].¹

1669. Legacy of Furniture.

I give and bequeath to [*name*] all the household furniture, books, works of art, and other chattels and effects, together with wines, liquors, fuel, house-keeping provisions, and other consumable stores, which shall at my decease be in or about my dwelling-house at , except [*stating reservations, if any — e. g.:*] money and securities for money, evidences of debt and of title, and accounts, vouchers, and manuscripts.

1670. Legacy of Dress and Ornaments to Wife.

I give and bequeath to my wife [*name*] absolutely all her paraphernalia, wearing apparel, and linen, and the watches, rings, trinkets, jewels, and personal ornaments usually worn by her, or reputed to belong to her.

1671. Legacy of Furniture, etc., to Wife, During Life or Widowhood.

I give and bequeath to my wife during her life, and so long as she shall remain a widow, the use of all [*etc., as above*]. And after her decease or remarriage, I give and bequeath the same to [*name*] absolutely if he [*or, she*] should be living at the decease or remarriage of my wife; but if he [*or, she*] should be dead, then to [*several parties may here be named in succession; or, in case the will has directed the testator's property to be sold, and the proceeds held in trust, say:*] and after her decease or remarriage, I direct my executors and trustees to sell the same, and add the proceeds to the trust fund, under this my will].

1672. Legacy of Furniture to be Divided Amongst Children.

I bequeath to my children who shall be living at the time of my death all [*etc., as above*], equally to be divided between them; and if any dispute should arise with respect to the division, I authorize my executors to distribute the said effects equally amongst my said children.

¹ The general time for payment of legacies purposes, as in the case in the text, a direction should be added as to its payment within death. If the legacy be given for present a limited time, as above.

1673. Legacy of a Debt.

I bequeath to A. B. any debt which, at the time of my decease, shall be owing from him to me, together with any interest then due thereupon.

1674. Legacy of a Share Under Another Person's Will.

And, whereas, under the will of [name] I am entitled to a share in his residuary personal estate, I bequeath the said share to [name].

1675. Bequest of Jewels, etc., to Wife, and of Estate in Household Effects, for Life or Widowhood.

I give and confirm to my dear wife all the jewels, trinkets, and personal ornaments worn or used by her during my lifetime; and I also give to her all my wines, liquors, and other consumable stores, and all my horses and carriages, for her absolute use and benefit. I give all my plate and plated articles, books, pictures, and prints unto my said wife, to use and enjoy the same during her life, if she shall so long continue my widow; and from and after her decease or second marriage (whichever shall first happen), to such of my sons as shall first attain the age of twenty-one years. I give my leasehold dwelling-house, being No. , etc. [describing it], and all my furniture and household effects being in or about or appropriated or belonging to the said dwelling-house, other than and not being plate or plated articles, books, pictures, or prints, unto my said wife, to occupy the said dwelling-house, and to use and enjoy the said furniture and household effects during her life, if she shall so long continue my widow, she paying the ground rent, and all taxes and outgoings payable in respect of the said dwelling-house, and observing and performing the covenants contained in the lease under which the same is or at my decease shall be held. And I declare that from and after the decease or second marriage of my said wife (whichever shall first happen), the said dwelling-house, furniture, and household effects shall sink into and form part of my residuary estate.

1676. Bequest of the Good-will of a Business.

I give and bequeath the good-will and benefit of the business of , which I am now carrying on at , and also all my capital and property which shall be employed therein at my decease, and also the leasehold premises situate and being No. , at , aforesaid, wherein the said business is now being carried on, for all my term and interest therein, unto my son , absolutely.

1677. Legacies to Children, with Directions for Investment.

I bequeath to each of my children, C. D., E. F., and G. H., the sum of dollars, with interest at the rate of per cent. per annum, from my death till the payment thereof, such interest to be paid half-yearly. And I hereby declare, that if my said daughter, G. H., shall be under twenty-one years at my death, and shall not have married, the legacy hereby given to her shall be retained by my trustees hereinafter named, their executors or administrators, upon trust, to pay the same to her when she shall attain twenty-one years or marry; and upon trust in the meantime to pay the interest of such legacy to her, and her receipt, notwithstanding her infancy, to be an effectual

discharge for the same; and if the said G. H. shall not attain twenty-one years or marry, the same legacy shall, upon her death, sink into my residuary estate.¹

1678. Legacy to an Infant, to be Paid to His Father.

I bequeath to C. D., of _____, the sum of _____ dollars; and if the said C. D. shall be under twenty-one years when the said legacy shall be payable, I direct the same legacy to be paid to his father, E. D., of, etc., to be managed by him at his discretion, for the benefit of his said son, till he shall attain twenty-one years; in such case the receipt of the said E. D. to be an effectual discharge for the same legacy.

1679. Legacies to Executors.

And I do hereby nominate and appoint the said C. D. and E. F. executors of this will. And I bequeath to such of them as shall act in the execution of this my last will the sum of _____ dollars apiece [to be in lieu of all commissions and fees].²

1680. Pecuniary Legacy to a Married Woman.

I bequeath to A. B., wife of C. B., the sum of _____ dollars. And I declare that said sum shall be for her sole and separate use and benefit, and that her receipt, notwithstanding her present or any future marriage, shall be a valid and effectual discharge of the same.

1681. Bequest in Trust for Unincorporated Society.

I give and bequeath to A. B. and C. D., and to their successors forever, the sum of _____ dollars, in trust, for the benefit of such undergraduate students of the collegiate department of the University of _____, as shall be, or shall from time to time become, members of a literary association or society now organized among said students, and known as the _____ Society, of which society I am a graduate member, to be applied by the said trustees to educational purposes for their benefit, in manner following [*stating application*].

1682. Bequest to a Corporation.

I give and bequeath to [*stating, if possible, the full name of the corporation, or, if not certainly known, describing it*], at _____, the sum of _____ dollars, to be applied to the uses of said society [*or, college, or otherwise. Any particular object, such as the endowment of a professorship, may be here stated*].

1683. Bequest on Condition.

WHEREAS, the trustees of H. College are now engaged in an effort to enlarge its sphere of action, and give it greater efficiency in promoting education, and being desirous, if such effort shall prove successful, of still further enlarging its sphere and efficiency by endowing a professorship of _____ in said college:

THEREFORE, I give and bequeath to said [*here insert full name*], the sum of _____ dollars, to be paid within _____ years after my death, for the purpose

¹ This is a convenient proviso in the case of executors or not. If a legacy be given to legacies of small amount to infants

² If legacies be given to executors, care should be taken, as in the text, to mark questions are avoided. whether the legacies be given to them *qua*

of founding and permanently endowing a professorship of _____ in said college; upon condition, however, that the sum of _____ dollars shall, within _____ years from the time of my death, be raised for the purpose of endowing two other professorships, and paying the indebtedness of said college.

1684. Direction that Legacies Shall be Paid Free from Duty.

And I direct that all legacies given by my said will, or any codicil thereto, shall be paid free from legacy duty or tax.

1685. Direction that Certain Legacies Shall be Paid in Full in Priority to the Others.

I direct that the legacies hereinbefore given to [*naming the legatees*] shall be paid in priority to any other legacy given by my will.

1686. Declaration that Legacies Shall Not be in Satisfaction of Debts.

I direct that no legacy or gift contained in my will shall (except where a contrary intention is expressed) be taken to be in satisfaction of any debt owing by me.

1687. Provision that if a Legatee is Dead, the Legacy Shall Go to His Executors or Administrators.

And if any legatee be now dead, or die before me, I give the legacy intended for him or her to his or her executors or administrators, to be applied as if the same had formed part of the personal estate of such legatee at his or her decease.

1688. Declaration that Money Advanced by the Testator During His Life to His Children Shall be Deducted from their Portions or Shares of His Estate.

I declare that all such moneys as I have or shall have advanced to any of my said children, or as shall be owing to me from any of them at my decease, shall be considered as part of my residuary estate, and shall be deducted from his, her, or their respective shares.

1689. Declaration that Advancement Shall Not be in Satisfaction of Portions.

I declare that such advancements as I may have made, or may hereafter make, to any of my children [*or, nephews and nieces, etc.*], shall be in addition to, and not in satisfaction of, any legacies, portions, or other benefit given them by my will.

1690. Authority to Executors to Defer Calling in a Debt.

I authorize and empower, but do not require, my executors to defer and postpone the requiring payment of any debt [*carrying interest*] which may be owing to me from [*name*] at the time of my decease, for such period as my executors shall think fit.

1691. Bequest of an Annuity to be Purchased.

I give and bequeath an annuity of _____ dollars to _____, for her life, for her sole and separate use; and for this purpose I direct my executors, within _____ months after my decease, to lay out a sufficient portion of my personal

estate, in the purchase of such an annuity as aforesaid, in her name, from some incorporated company; but neither she nor any person claiming under her shall be entitled to claim or accept in lieu or satisfaction thereof the sum which may be required for the purchase of such annuity.

1692. Direction as to Payment of Annuities.

And I direct that the said annuity of dollars shall be paid clear of all deductions, except legacy duty or tax, by equal half-yearly payments, the first payment to be made at the end of six calendar months from my death.¹

1693. Bequest of Fund, with Power of Appointment.

[*Add, after gift to the trustees:*] upon trust that they, the said trustees or trustee, shall, after the death or remarriage of my said wife, whichever shall first happen after my death, raise the sum of dollars, or so much thereof as the said trust moneys, stocks, funds, and securities will be sufficient to raise, and shall pay the said sum of dollars, or so much thereof as shall be produced by the said trust moneys, stocks, funds, and securities as aforesaid, unto and amongst all and every or such one or more exclusively of the others or other of my said son E. F., and my said three daughters G. H., I. K., and L. M., at such times, and in such proportions, and with such restrictions and limitations over, such limitations over being for the benefit of some one or more of my said last-named son and daughters, as my said wife, at any time during her widowhood, by any deed, with or without power of revocation and new appointment, or by her will or codicil, shall appoint. And in default of such appointment, or so far as no such appointment shall extend, then, as to the said sum of dollars, or so much thereof whereto no such appointment shall extend; as also to the surplus (if any) of the said trust moneys, stocks, funds, and securities after the purposes aforesaid shall be answered, upon trust that the said trustees or trustee shall hold the same in trust for my said son E. F., and my said daughters G. H., I. K., and L. M., or such of them as shall be living at my death, and the issue of such of them as shall be then dead leaving issue, equally to be divided between them if more than one, the issue of such of them 'as shall be then dead to take the shares which their respective parents would have taken if then living.

1694. Devise of House and Lands to Son On His Attaining Twenty-one, with Power to Trustees to Apply Rents and Profits of Estate During Minority of Son for His Benefit.

I give and devise my message or dwelling-house in which I am now residing, called , together with the pleasure-grounds, lands, gardens, out-buildings, and appurtenances thereunto belonging, or therewith usually held or enjoyed, and also all that piece or parcel of land, situate and being in , which I lately purchased of , and which is now in the tenure or occupation of , his under-tenants or assigns, unto C. D., of, etc., and E. F., of, etc., and their heirs, to the use of my son F. B., his heirs and assigns:

PROVIDED ALWAYS, and I hereby declare that if the said F. B. shall die under

¹The will should specify the time when payment of an annuity given by it shall commence; if no time be mentioned, the annuity, like all other legacies, will not begin to be payable till twelve months from the testator's death; so that the first payment of an annuity, directed to be paid half-yearly, will not take place till eighteen months from the death of the testator.

the age of twenty-one years, or in my lifetime, then and in such case the said messuage and other the premises hereinbefore devised, shall form part of my residuary real estate hereinafter devised: And I direct that if the said F. B. shall be under the age of twenty-one years at my decease, the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor or other, they, the trustees or trustee for the time being of this, my will, shall enter into, and during the minority of the said F. B. remain in the possession or receipt of the rents and profits of the said messuage and premises hereinbefore devised, and shall apply the whole or such part as they or he shall think fit of the said rents and profits, for or towards the maintenance and education of the said F. B., and shall invest the surplus (if any) of the said rents and profits, and all the resulting income thereof, in or upon some or one of the stocks, funds, or securities hereinafter authorized as investments, with power to vary the said investments from time to time into or for others of the same or a like nature, and with power also to resort to the accumulation of any preceding year or years, and to apply the same for the maintenance and education of my said son: And I declare that the said accumulations, or so much thereof as shall not be applied as aforesaid, shall be paid and transferred to my said son, as and when he shall attain the age of twenty-one years, but if he shall die under that age, then the same shall sink into and form part of my residuary personal estate: And I also declare that during such minority, the said trustees or trustee shall be at liberty to let the said messuage and lands for any term not exceeding seven years in possession, and in other respects to manage the same as they or he shall think fit.

1695. Devise to Executors in Trust, with Power to Sell, etc.

I give and devise all my real and personal estate, of what nature or kind soever, to C. D. and E. F., my executors hereinafter appointed, in trust, for the execution of my will, with power to sell and dispose of the same, at public or private sale, at such times, and upon such terms, and in such manner, as to them shall seem meet [provided, however, that no part of my real estate shall be sold, until after the expiration of years from my decease].

1696. Power to Arrange and Compromise.

And I appoint the said E. F. and G. H. executors of this, my will; and authorize the acting executors or executor for the time being of this, my will, to satisfy any debts claimed to be owing to me or my estate, and any liabilities to which I or my estate may be alleged to be subject, upon any evidence they or he shall think proper, and to accept any composition or security for any debt, and to allow such time for payment (either with or without taking security), as to the said acting executors or executor shall seem fit, and also to compromise, or submit to arbitration, and settle all accounts and matters belonging or relating to my estate, and generally to act in regard thereto as they or he shall deem expedient, without being responsible for any loss thereby occasioned.

1697. Directions to Executors as to Winding Up Testator's Partnership Business.

And with respect to my share and interest in the business of , now carried on by me at , in partnership with [names], under the firm of & Co., I empower the executors or executor for the time being

of this, my will, to adjust and settle all accounts and transactions relating to the said partnership business, and to wind up the affairs and concerns thereof and ascertain the amount of my share and interest therein, either according to the provisions of the articles of partnership under which the said business shall be carried on at my decease, or upon such other terms and in such other manner as may be agreed on between them or him and my surviving partners or partner, with power for the said executors or executor to refer to arbitration, or otherwise to compromise or settle any question that may arise in or about the winding up of the said concern, in such manner as they or he may think fit, and generally to do and execute all such acts and things in relation to the premises as may appear to them or him necessary or expedient, without being answerable for any loss which may arise thereby: And I authorize the said executors or executor, if they or he shall in their or his discretion think fit, to permit the whole or any part of the amount which on taking the accounts of the said partnership shall appear to be due to my estate, as and for my share and interest in the said business, to remain in the said business as a loan for any period not exceeding seven years from my decease, but so that the repayment thereof, with interest after the rate of per cent. per annum, shall be secured by the joint and several bond of the persons or person for the time being, continuing to carry on the said business either with or without any other security for the same, as the said executors or executor shall think fit: And subject to the provisions hereinbefore contained as to the said business, I empower my trustees or trustee to postpone the sale and conversion of my real and personal estate for so long as they or he shall think fit.

1698. Clause Concerning Disputes.

My express will is, and I hereby order and appoint, that if any difference shall arise or happen, concerning any gift, bequest, or other thing in this will, no suit shall be brought concerning the same, but the same shall be referred wholly to the award of my friends C. D. and E. F., both of , and what they shall order, direct, or determine therein, shall be binding and conclusive on all persons concerned.

1699. Clause Releasing Debts Due.

WHEREAS, there are considerable sums of money due and owing to me upon bonds, bills, and otherwise, from my relations hereinbefore named, which I desire to release, I do hereby direct that all such evidences of debt shall be canceled and destroyed by my executors immediately after my death; and I hereby discharge my relations hereinbefore named, and their heirs, executors, and administrators, from the payment of any debts due and owing to me or my estate, upon any account whatsoever, without any abatement of the legacies hereinbefore given to them respectively.

1700. Appointment of Executors.

I appoint my wife [*name*], and A. B. and C. D., to be executors [and trustees] of my will; [but if my wife should marry again, she shall thereupon cease to be an executor and trustee of my will, which shall thenceforth take effect, and be executed in the same or in like manner as if the said A. B. and C. D. had been originally appointed the sole trustees and executors].

1701. **Another Form of Will, with Provisions as to Trusts.**

IN THE NAME OF GOD, AMEN.

I, _____, of the city of _____, county of _____, and state of _____, being now in good health, strength of body and mind, but sensible of the uncertainty of life, and desiring to make disposition of my property and affairs while in health and strength, do hereby make, publish, and declare the following to be my last will and testament, hereby revoking and canceling all other or former wills by me at any time made.

Article First. I direct the payment of all my just debts and funeral expenses. *

Article Second. I hereby give, devise, and bequeath all the rest, residue, and remainder of my estate, real, personal, or mixed, wheresoever situated, whereof I may be seized or possessed, or to which I may be in any manner entitled, or in which I may be interested at the time of my death, unto my executors and trustees hereinafter named, and to their heirs and assigns forever.

IN TRUST, NEVERTHELESS, AS FOLLOWS:

Article Third. I further will and direct that out of the said trust estate, mentioned in the foregoing article of this, my will, there shall be reserved and set apart by my said executors and trustees, the sum of _____ dollars (\$ _____), which shall be safely and conservatively invested, so as to yield a regular interest or income, and I direct that all the profits, interest, and income of the said fund, as the same shall be received by my said executors and trustees, shall, during his life be paid by my trustees to my husband, and that his receipt for such payments shall be a full and sufficient acquittance and discharge of my said executors and trustees.

Article Fourth. I further will and direct that thereafter, and out of the residue and remainder of the said estate and fund mentioned in article second of this, my last will and testament, there shall be reserved the sum of _____ dollars for each and all of my children, and that my said executors and trustees shall invest the principal of each of said sums of _____ dollars in a similar manner to that hereinbefore provided in article third hereof, and shall pay over the profits, interest, and income to each of my said children respectively, until they shall severally attain the age of [twenty-five] years, and as each of my said children shall attain such age of [twenty-five] years, my said executors and trustees are hereby directed to pay to my said children, or if any of them shall have died leaving lawful issue, then to their legal representatives, the principal of the said several sums ~~as aforesaid~~.

Article Fifth. In case any of my said children shall die before they reach the age of twenty-five years, without leaving lawful issue surviving, I hereby will and direct that the said share of the ~~same~~ shall be paid into and become a part of the residuary estate hereinafter ~~mentioned~~ in article eighth hereof.

Article Sixth. I hereby further will and direct that ~~my~~ said executors and trustees, after making the investments and payments provided for in the foregoing articles hereof, shall likewise set aside the further sum of _____ dollars of the fund and estate mentioned in article second hereof, and cause the same to be so invested as in article third directed, and that all the profits, interest, and income of the said _____ dollars, shall, during the life of my father _____, or my mother _____, or either of them, be paid semi-annually by my said executors and trustees, to my said father during his

life, and to my said mother, if she shall survive him, during her life, and that the receipt of my said father or mother for such payments shall be a full and sufficient acquittance and discharge of my said executors and trustees therefor.

Article Seventh. And I further will and direct that upon the death of my said father and mother, the said sum of dollars shall be paid into and become a part of the residuary estate hereinafter mentioned in article eighth hereof.

Article Eighth. If after investing or paying the aforesaid sums mentioned in articles third, fourth, sixth, and seventh hereof, there shall remain any residue of my said estate, I direct that the same shall be added to the dollars hereinbefore mentioned in article third hereof, and that the rents, issues, and profits thereof shall be paid over as therein provided. It being the intention of the foregoing provisions of this will, that out of my said estate there shall first be invested and held the said sum of dollars, mentioned in the third article hereof; and that thereafter out of the remainder of my said estate, if there shall be sufficient therefor, the further amounts of dollars, shall be paid to or invested for each of my said children, as provided in the fourth article hereof; and if there shall not be sufficient residue of my said estate to pay in full said sums of dollars, that then such remainder over and above the sum mentioned in article third shall be equally apportioned and divided between my said children; and that after such payments or investments shall be made to or on behalf of my said children, there shall be set aside the further sum of dollars, mentioned in article sixth hereof, and that if there shall not be sufficient to pay said dollars, that then so much of said sum as shall remain, after making the investments and payments mentioned in articles third and fourth hereof, shall be invested as provided in the sixth article hereof. And that thereafter, if there shall be sufficient remaining of my estate therefor, then shall be paid the sum of dollars, to my aunt, Mrs. , if she shall survive me.

Article Ninth. I hereby further will and direct that if my said husband, , shall survive me, he shall have the right and power to dispose of and distribute among our children, in such amounts and on such terms and conditions as he shall see fit by his last will and testament, or by any other paper of a like nature, the said fund mentioned in article third hereof, and the said residuary estate, if any, mentioned in article eighth hereof. If my said husband shall not have made such appointment and distribution as aforesaid, then I will and direct that all the funds and trust estate mentioned in the second and sixth articles hereof shall be distributed as hereinafter provided in article tenth hereof.

Article Tenth. Upon the death of my said husband, not having made the appointment and distribution provided for in article ninth hereof, or upon my own death, if I shall survive my said husband, I hereby will and direct that the principal of the said funds and trust estate mentioned in articles third and eighth hereof, shall be equally divided into as many portions or shares as there may be children of mine living, or deceased children leaving issue. One of the said shares or portions of my said estate shall be set off to each of my said children and to the lawful issue of any of my said children that shall be dead at such time, such issue to have the share or portion that their parent would have been entitled to if living.

And I further will and direct that my executors and trustees shall invest the principal of each of such shares or portions as hereinbefore provided, and shall in like manner pay over the profits, interest, and income thereof to each of my said children, or their personal representatives, until they shall severally attain the age of [twenty-five] years, and as each of my said children shall attain such age of [twenty-five] years, the said executors and trustees are hereby directed to pay to such children, or if any of them shall have died leaving issue, then to their legal representatives, the principal of the several shares so set off to my said children.

Article Eleventh. I hereby nominate, constitute, and appoint my husband, _____, of the city of _____, and my brother-in-law, _____, of the city of _____, or the survivor of them, as the executors and trustees, or executor and trustee, of this, my last will and testament, and I hereby nominate, constitute, and appoint my said husband as the guardian of my children.† And I hereby authorize and empower my said executors and trustees, or their successors, to grant, bargain, sell, convey, and dispose of any lands, tenements, or property, real or personal, whereof I may be seized at the time of my death, or of which they may be seized or possessed as my said executors and trustees, and upon any such sale thereof, to execute, acknowledge, and deliver all necessary and proper deeds or instruments of conveyance in the law for the vesting in the purchaser or purchasers the title thereof in fee, and I hereby authorize and empower my said executors and trustees, or their successors, from time to time, in their discretion to call for payment of and to sell and transfer all and any of the property or securities in or upon which my estate, or any part thereof, may be invested and the same again to re-invest in other securities.

And I hereby request that said _____ and _____ shall be allowed to qualify and serve as executors, trustees, or guardians, of and under this, my last will, whether in the state of _____, or elsewhere, without giving any bonds or security whatsoever.

Article Twelfth. In case of the death, resignation, inability, or refusal to serve of both or either of the hereinbefore-mentioned executors and trustees, one or more executors shall be chosen and appointed in writing by the remaining executor and trustee, and by such of my children as shall be more than _____ years of age, or the majority of them, so that there will always be two executors and trustees hereunder. PROVIDED, HOWEVER, that no person who is the husband of either of my daughters shall be appointed or shall be or act as executor or trustee under this will.

Article Thirteenth. So far as possible, a yearly statement of the income and condition of my said estate and of the several funds and payments herein mentioned or provided for, shall be prepared and rendered by my said executors and trustees to the person or persons at the time entitled to the income of said fund or estate, or any portion thereof. If said statement shall be accepted and ratified by such person or persons, it shall be a full acquittance and discharge of the said executors and trustees for all matters arising under their trust until that time, provided, however, that nothing herein contained shall discharge the said executors and trustees from any wilful fraud or neglect on their part.

[Witness and attestation clause as in Form 1705.]

1702. Same.

[As in Form No. 1701, to " ; thence as follows:]

Article Second. I hereby give, devise, and bequeath all the residue and remainder of my estate, real, personal, or mixed, wheresoever situated, whereof I may be seized or possessed, or to which I may in any manner be entitled, or in which I may be interested at the time of my death, unto my executors and trustees hereinafter named, and to their heirs and assigns forever.

IN TRUST, NEVERTHELESS, AS FOLLOWS:

Article Third. I direct that my said executors and trustees shall let or lease my house, No. , street, in the city of , where I now reside, if they can let the same so that it will yield a fair income; but that the said house shall be sold as soon as its fair value can be obtained by my said executors and trustees, and the proceeds invested as hereinafter provided for the rest of my estate.

Article Fourth. And I further will and direct that all the rest, residue, and remainder of my said property shall be consolidated into a permanent fund, to be safely and conservatively invested upon bond secured by mortgage upon real estate, or in such other first-class securities as to my executors and trustees shall seem best, excluding, however, bonds of new railroads; and such investments to be made so as to yield a regular interest and income, which shall be paid out, expended, and divided by my said executors and trustees as hereinafter more particularly set forth. I hereby also authorize and empower my said executors and trustees, or the survivor or successors of them, to grant, bargain, sell, convey, and dispose of any lands, tenements, or property, real or personal, whereof I may be seized at the time of my death, or of which they may be seized or possessed as my executors and trustees, and upon any such sale thereof to execute, acknowledge, and deliver all necessary and proper deeds or instruments of conveyance in the law for the vesting in the purchaser or purchasers the title thereof in fee. And I also authorize and empower my said executors and trustees, from time to time, in their discretion, to receive or call for the payment of and to sell and deliver and to make any necessary assignments or transfers of any and all of the property or securities in or upon which the said money or fund, or any part thereof, shall be invested, and the same again to reinvest in or convert into other securities.

Article Fifth. And I further will and direct that my said executors and trustees, or either of them, shall not be held pecuniarily liable for any loss to or any diminution in the said fund, not arising from their wilful fraud or neglect.

Article Sixth. I direct that all the profits, interest, and income of the said fund, as the same shall be received by my said executors and trustees, after deducting their expenses, commissions, and disbursements, shall, during the life of my wife, , be paid by my said executors and trustees to my said wife, and that her receipt for such payments shall be a full and sufficient acquittance and discharge of my said executors and trustees; the said provision to be in lieu and bar of all her dower and right of dower in my said property.

Article Seventh. Upon the death of my said wife, or upon my own death, if I shall survive my wife, I hereby will and direct that the entire principal of the said fund and of my said estate shall be equally divided into as many

portions or shares as there may then be children of mine living, or deceased, leaving issue.

One of the said shares or portions of my said estate shall be set off to each of my said children, and one of such shares or portions to the lawful issue of any of my said children who shall be dead at such time, such issue to have the share or portion that their parent would have been entitled to if living.

As I have heretofore made provision or advancement for my daughter, _____, now _____, by an instrument in writing, dated on or about the day of _____, and thereafter, and on or about the day of _____, _____, have amended said instrument in writing, as by reference thereto will more fully appear, and as I have also heretofore set aside certain sums and securities for my other children, or some of them, and as I may hereafter, and during my lifetime, making similar advancements to, or provisions for, my other children, or some of them, I will and direct that my said executors, in arriving at or ascertaining the amount of the portion or share that shall be set off to my said several children, shall estimate and charge against any or all of them any advancements or provisions that shall have been so made to or for them, or either of them, before my death, the amount of such advancements to be arrived at by taking the amount of cash, if any, that shall be held for, or appear to the credit of any or either of my said children, together with the market value at the time of my death, of the bonds, mortgages, stock, or other securities that at the time of my death shall be held for or to the credit of either of my said children; and if the amount of such advances or provisions shall appear upon the books of _____, in an account with any or either of my said children, the amount of money due under such accounts, or the credits or securities contained or referred to therein, shall be considered the basis of such advancement or provision so far as such accounts may cover said advancements or provisions.

Article Eighth. I further will and direct that the said trustees shall invest the principal of such share or portion respectively set over to my several sons, in a similar manner to that hereinbefore provided in the preceding fourth article hereof, and in like manner pay over the profits, interest, and income of said several shares to each of my said sons respectively, until they shall severally attain the age of twenty-five years; and as each of my said sons shall attain such age of twenty-five years, the said executors and trustees are hereby directed to pay to my said sons, or if any of them shall have died leaving issue, then to their legal representatives, the principal of the several shares so set off to my said sons. The principal of the share set off to each of my daughters shall in like manner be held in trust for each, and invested by my said executors and trustees, as aforesaid, and the net profits, interest, and income of the said fund shall be paid to each daughter respectively during their lives, and upon their death, the principal of said shares shall be distributed equally among the respective legal representatives of said daughters.

Article Ninth. I hereby make, nominate, constitute, and appoint _____, of the city of _____, and _____, of the city of _____, as the executors of and trustees under this, my last will and testament; and I hereby direct and request that they, and each of them, shall be allowed to qualify as such executors and trustees, as aforesaid, whether in the state of _____, or elsewhere, without giving any bond or security whatsoever.

Article Tenth. In case of the death, resignation, incapacity, or refusal to serve of either of the above-named executors and trustees, I direct that the survivor of them shall have and be charged with all the rights, duties, and powers given to the two executors and trustees named herein as above.

Article Eleventh. In case of the death, resignation, inability, or refusal to serve, of both of the hereinbefore-mentioned executors and trustees, two executors and trustees shall be chosen and appointed by my said wife , and by my children, , or the majority of them then living. Provided, however, that no person who is the husband of either of my said daughters shall be appointed or shall act as or be executor or trustee under this will.

Article Twelfth. And I hereby further will and direct that in case, at the time of my death, any part or proportion of my said estate shall be invested in any partnership, or in any business so that the same cannot immediately be turned into money or divided as hereinbefore provided, that then, and in that case my said executors and trustees shall deliver and pay over to the person or persons, who, by the terms hereof, shall be entitled to any share or proportion of my estate, the corresponding share of the income to be derived from the partnership as aforesaid.

[Witness and attestation clause as in Form 1705.]

1703. Same.

[As in Form No. 1701, to *; thence as follows:]

Article Second. I hereby give, devise, and bequeath all my estate, real, personal, or mixed, wheresoever situated, whereof I may be seized or possessed, or to which I may be in any manner entitled, or in which I may be interested at the time of my death, unto my beloved wife, , if she shall be living at the time of my said death, and to her heirs and assigns forever.

Article Third. I hereby nominate, constitute, and appoint my said wife, , as the sole executrix of this, my last will and testament, and also as the guardian of any of my children who may be minors at the time of my death, and I hereby direct and request that she may be allowed to qualify and serve as such executrix or guardian, whether in the state of , or elsewhere, without giving any bond or security whatsoever.

Article Fourth. But in case my said wife shall not be living at the time of my said death, I hereby will and direct that the said estate mentioned in the second article of this, my said will, shall not vest in the heirs of my said wife, nor shall any of the provisions of the second and third articles hereof apply to my said estate, or have any force or effect; but in such case I hereby give, devise, and bequeath all my estate, real, personal, or mixed, wheresoever situated, whereof I may be seized or possessed, or to which I may be in any manner entitled, or in which I may be interested at the time of my death, unto my executor and trustee hereinafter named, and to his heirs and assigns forever:

IN TRUST, NEVERTHELESS, AS FOLLOWS:

I direct my said executor and trustee, in his discretion, to retain for the use of my children, and for so long as my said executor and trustee shall deem proper, but not exceeding the time hereinafter mentioned, the dwelling-house now occupied by my family, or which may be so occupied by them after my death, together with so much of the furniture and personal property used

in and in connection therewith, as shall be deemed by my said executor and trustee necessary and proper for the comfort of my said children. And I further will and direct that all the rest, residue, and remainder of my said property shall be consolidated into a safe and permanent fund, to be safely and conservatively invested so as to yield a regular interest or income.

And I hereby further will and direct that the rents, issues, income, interest, revenue, and dividends of the said estate or fund shall be paid quarterly or semi-annually by my said executor and trustee, to my son, _____, and to my daughters, _____ and _____, for their support and maintenance, share and share alike, so long as my said daughters shall remain single and unmarried; but if either or both of my said daughters shall marry, I request that one year after her, or their said marriage, or at any time thereafter, my said executor and trustee shall cease to pay to such married daughter, her said proportionate share of said income, or such portion thereof, if any, as shall in the opinion of my said executor and trustee be necessary and requisite for the comfortable support and maintenance of my said son, _____, and of either of my daughters that may be at the time unmarried.

Article Fifth. In case my said estate shall not vest in my wife, as provided in the second article of this will, I hereby make, nominate, constitute, and appoint _____, of the city of _____, county of _____, and state of _____, as the executor and trustee of and under this, my last will and testament, and the guardian of any of my children who may be minors at the time of my death.

And I hereby authorize and empower him to sell, convey, and dispose of any lands, tenements, or property whereof I may be seized at the time of my death, or of which he may be seized or possessed as my executor and trustee, and upon any such sale thereof, to execute, acknowledge, and deliver all necessary and proper deeds or instruments of conveyance in the law, for vesting in the purchaser or purchasers the title thereof. And I hereby authorize and empower my said executor from time to time, in his discretion, to call for payment of, and to sell and transfer all or any of the property or securities in or upon which my estate, or any part thereof, shall be invested, and the same again to reinvest in other securities.

Article Sixth. In case of the death of my said executor and trustee, or of his failure or inability to qualify and act, I hereby order and direct that his substitute or successor shall and may be appointed in writing, to be filed in the office where this will shall be probated, by such of my children as may be, at such time, of the age of eighteen, or upwards, or by a majority of them; provided, however, that no person who is the husband of either of my said daughters shall be appointed or act as such executor and trustee.

Article Seventh. Upon the death of my said son, _____, or if he shall die before me, I hereby give, devise, and bequeath all of my said estate unto his issue, if any, and to my said daughters, or to their issue, if any; all said issue taking the portion of their parent by right of representation, and the portion of any of said children dying without issue, to go to my other children, or their issue. And I hereby further will and direct, that my said executor and trustee, or his successor, shall thereupon divide and pay as aforesaid, the whole of my said estate equally between my said daughters, or their issue, if any, and the issue, if any, of my son, _____.

[Witness and attestation clause as in Form 1705.]

1708. Codicil Appointing a Trustee and Executor in the Place of a Deceased Trustee and Executor Appointed by the Testator's Will.

CODICIL to the last will and testament of me, A. B., of _____, which bears date the _____ day of _____ :

WHEREAS, by my said will, I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children, after the decease of my wife]; and,

WHEREAS, the said C. D. having lately died, I am desirous that E. F., of _____, shall be substituted as a trustee and executor of my said will [and a guardian of my infant children], in the place of the said C. D., deceased; I DO HEREBY DECLARE that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout, instead of the name of the said C. D. And in all other respects, I do confirm my said will.

IN WITNESS [*etc., as in Form 1705.*]

1709. Codicil Revoking the Appointment of One of Trustees and Executors, and Appointing a New One in His Place.

A CODICIL [*etc., as above*]: WHEREAS, by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife], and I have given him a legacy of _____ dollars for his trouble in acting as such trustee and executor: Now I hereby revoke the appointment of the said C. D. as such trustee and executor [and guardian], and also the said legacy given to him as aforesaid: And I appoint E. F., of _____, to be a trustee and executor of my said will [and also to be a guardian of my infant children after the decease of my said wife], in the place of the said C. D., and I give to the said E. F. a legacy of _____ dollars for his trouble in acting as such trustee and executor. And I declare that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D. And in all other respects I confirm my said will.

IN WITNESS [*etc., as in Form 1705.*]

1710. Codicil Appointing an Additional Trustee and Executor.

CODICIL [*etc., as in Form 1449*]: WHEREAS, by my said will I have appointed C. D., of _____, and E. F., of _____, to be the trustees and executors of my said will [and also to be the guardians of my infant children after the decease of my wife]: Now, I hereby appoint G. H., of _____, to be an additional trustee and executor of my said will [and to be an additional guardian of my infant children after the decease of my said wife], and I declare that my said will shall be read and construed as if the names of the said C. D., E. F., and G. H. were inserted therein throughout, instead of the names of the said C. D. and E. F., and that all the trusts and powers in and by my said will reposed in and made exercisable by the said C. D. and E. F., or the survivor of them, or the heirs, executors, or administrators of such survivor, shall be executed and exercisable by the said C. D., E. F., and G. H., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor: And in all other respects, I confirm my said will.

IN WITNESS [*etc., as in Form 1705.*]

III. INSTRUCTIONS FOR EXECUTION ACCORDING TO THE LAW OF THE VARIOUS STATES AND TERRITORIES.

ALABAMA.

A will, except in the cases hereinafter provided for, should be in writing, signed by the testator, or by some person in his presence and by his direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator. Code of 1907, § 6172.

An unwritten will of personal property is valid only when the property bequeathed thereby does not exceed in value five hundred dollars. *Ibid.*, § 6176.

Such unwritten will, to be valid, must be made during the last sickness of the deceased, and at his dwelling, or where he had resided ten days or more, except when he was taken sick from home and died before his return; and it must be proved that the testator, at the time of making the same, called upon the persons present, or some of them, to take notice, or bear witness, or to that effect, that such was his will. *Ibid.*, § 6177.

No provision in this article (§§ 6172-6195) must be construed to prevent soldiers in actual military service, or mariners or seamen at sea, from disposing of their personal property as they might have done before the adoption of this Code. *Ibid.*, § 6178.

After the expiration of six months from the time of making an unwritten will, no testimony must be received to prove the same, unless the words, or the substance thereof, was reduced to writing within six days after making of the same. *Ibid.*, § 6180.

ALASKA.

Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator. Civil Code of 1900, § 138.

Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing. *Ibid.*, § 147.

No proof shall be received of any nuncupative will unless it be offered within six months after speaking testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. *Ibid.*, § 148.

Any person not an inhabitant of, but owning property, real or personal, in the district may devise or bequeath such property by last will executed according to the laws in force in the district, state, or territory in which the will may be executed. *Ibid.*, § 150.

A last will and testament, except when made by a soldier in actual military service or by a mariner at sea, is invalid unless it be in writing and executed with such formalities as are required by law. *Ibid.*, § 166.

ARIZONA.

A will, except where otherwise provided by law, shall be in writing and signed by the testator or by some other person, by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses, above the age of fourteen years subscribing their names thereto in the presence of the testator. Revised Statutes of 1901, § 4214.

When the will is wholly written by the testator, the attestation of the subscribing witnesses, as required by the preceding sections, may be dispensed with. *Ibid.*, § 4215.

Any person who is competent to make a last will and testament may dispose of his property by a nuncupative will under the conditions and limitations hereinafter prescribed. *Ibid.*, § 4217.

No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased; nor, when the value exceeds fifty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import. *Ibid.*, § 4218.

After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof shall have been committed to writing within six days after making the will. *Ibid.*, § 4220.

Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title (§§ 4212-4233). *Ibid.*, § 4221.

Every person authorized by law to make a will, may direct in said will that no bond or other proceeding in court shall be required of the person or persons named therein as executor or executors, other than the probating of the will and the filing of an inventory and appraisal of the estate, and letters testamentary shall be issued to such person or persons without any bond being required. *Ibid.*, § 4222.

ARKANSAS.

Every last will and testament of real or personal property, or both, shall be executed as follows, viz.:

The testator must subscribe the will at the end of it, or it must be done by some one for him, at his request. There must be two attesting witnesses, the signing to be done in the presence of each of them, or subsequently acknowledged to each of them, by the testator or testatrix, and in either case the testator, or testatrix, must state that the paper is his last will and testament. The witness shall sign their names as witnesses, at the end of the will, at the request of the testator.

If the will, both in body and signature, be wholly in the handwriting of the testator or testatrix, and so proved to be by at least three disinterested witnesses, to the handwriting and signature, there need be no attesting witnesses. But a witnessed will has preference over a will not witnessed, when they come in collision. *Digest of the Statutes of 1904*, § 8012.

Every person who shall sign the testator's name to any will, by his direction, shall write his own name as a witness to such will, and state that he signed the testator's name at his request. *Ibid.*, § 8013.

No nuncupative will shall be good where the estate bequeathed exceeds the value of five hundred dollars, nor unless it be proved by at least two witnesses, who were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, called on some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of his last sickness, and at the dwelling of the deceased, or where he had resided for the space of ten days or more except when the deceased may have been taken sick from home and died before his return. *Ibid.*, § 8024.

All mariners at sea or soldiers in the military service may dispose of their wages and other personal property as at common law. *Ibid.*, § 8025.

No proof of any nuncupative will shall be received, unless it be offered for probate within six months after the speaking of the testamentary words, nor unless the words, or the substance thereof, were reduced to writing and signed by witnesses within fifteen days after they were spoken. *Ibid.*, § 8026.

Citizens of any of the United States, or territories thereof, owning real or personal property in this state may devise and bequeath the same by last will and testament, executed and proved according to the laws of this state, or any state or territory in which the will may be made. *Ibid.*, § 8049.

CALIFORNIA.

Every will, other than an olographic or nuncupative will, must be in writing and subscribed at the end of it by the testator, or in his name by some person in his presence and by his direction, in the presence of two attesting witnesses, or acknowledged to them to have been made by him, or by his authority. At the time of subscribing or acknowledging, the testator must declare to the witnesses that the instrument is his will, and they must thereupon sign their names as witnesses at the end of the will, at the testator's request and in his presence. Civil Code of 1909, § 1276.

An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed. *Ibid.*, § 1277.

A witness in a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. *Ibid.*, § 1278.

A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will. *Ibid.*, § 1279.

A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition. *Ibid.*, § 1281.

No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter (§§ 1270-1313), except that a will made in a state or county in which the testator is domiciled at the time of his death, and valid as a will under the laws of such state or country, is valid in this state so far as the same relates to personal property, subject, however, to the provisions of section 1313. *Ibid.*, § 1285.

The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. *Ibid.*, § 1287.

A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. *Ibid.*, § 1288.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

One—The estate bequeathed must not exceed in value the sum of one thousand dollars.

Two—It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

Three—The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day. *Ibid.*, § 1289.

No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. *Ibid.*, § 1290.

No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator. *Ibid.*, § 1313.

COLORADO.

A will must be in writing signed by the testator or by some one in his presence and by his direction, and attested in the presence of the testator by two or more credible witnesses. Revised Statutes of 1908, § 7071.

No married man or woman shall by will devise or bequeath away, one from the other, more than one-half of his or her property, without the consent in writing of such other, executed after death of the testator or testatrix, but

it shall be optional with such wife or husband, after the death of the other, to accept the condition of any such will or one-half of the whole estate, both real and personal. *Ibid.*, § 7070.

Where any last will, testament or codicil of or concerning real estate in this state has been or shall be admitted to probate before any court or tribunal of any state or territory of the United States, or of any country beyond the limits of the United States, such court or tribunal being authorized by the laws of such state, territory or country to admit the same to probate, the record of such court or tribunal in the matter, accompanied with a certificate of the proper officer or officers, that said will, testament or codicil, or copy thereof, was proved agreeably to the laws and usages of the state, territory or country in which the same was admitted to probate, shall entitle such will, testament or codicil to probate and record without further proof of the execution thereof, and without notice to the heirs, widow or husband of the testator or testatrix; and letters testamentary or of administration may issue thereon as in other cases. *Ibid.*, § 7094.

CONNECTICUT.

A will must be in writing subscribed by the testator and attested by three witnesses, each of them subscribing in his presence, but all wills valid by law where executed shall pass property in Connecticut. General Statutes, Revision of 1902, § 293.

DELAWARE.

A will must be in writing, and signed by the testator, or some person subscribing the testator's name in his presence, and by his express direction; and attested and subscribed in his presence by two or more credible witnesses. Revised Code of 1893, ch. 84, § 3.

A nuncupative will of personal estate, not exceeding in the whole amount bequeathed two hundred dollars, pronounced by the testator, in his last illness, before two or more credible witnesses expressly requested by him to take notice thereof, and within three days afterward reduced to writing and attested by the signatures of said witnesses, shall, if the testator die before the expiration of said three days, or he be not, at the expiration of such period, or afterward, capable of making a will, be valid. Such nuncupative will must be produced in the register's office for probate within thirty days after the testator's death, or it shall not be received. *Ibid.*, ch. 84, § 5.

When a last will and testament, in writing, of a person not residing in this state at the time of his death, signed by the testator, or by some person subscribing the testator's name in his presence and by his direction, and attested and subscribed in his presence by two or more credible witnesses is proved in another state, territory, or country, before competent authority, a copy duly verified of such will and testament and the proof thereof, or of the record of such will and testament and proof shall be sufficient evidence. *Ibid.*, § 6.

DISTRICT OF COLUMBIA.

A will shall be in writing signed by the testator, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the testator by at least two credible witnesses. Code of 1910, § 1626.

No nuncupative will shall be valid in the District; but any soldier being in actual military service, or mariner being at sea, may dispose of his movables, wages, and personal estate by word of mouth; but such disposition must be proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that such was his last will, nor unless such will were made in the time of the last sickness of the deceased, and the substance thereof reduced to writing within ten days after the making thereof. *Ibid.*, § 1634.

No devise or bequest of lands, or goods, or chattels to any minister, public teacher, or preacher of the gospel as such, or to any religious sect, order, or denomination, or to or for the support, use, or benefit of or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, shall be valid unless the same shall be made at least one calendar month before the death of the testator. *Ibid.*, § 1635.

FLORIDA.

A will of real estate must be signed by the testator, or by some other person in his presence, and by his express directions, and attested and subscribed in the presence of such testator, by two or more witnesses. General Statutes of 1906, § 2272.

All wills of personal property shall be in writing, and signed by the testator or some other person in his presence, and by his express direction. *Ibid.*, § 2274.

No will or writing concerning any personal property shall be revoked nor shall any clause, devise or bequest therein be altered and changed by any words, or will by words of mouth only unless the same be in the life of the testator committed to writing, and after the writing thereof, read unto the testator and allowed by him, and unless such writing, reading and allowance be proved to have been done by three disinterested and credible witnesses. *Ibid.*, § 2275.

No nuncupative will shall be good which is not proved by the oaths of three witnesses present at the making thereof, nor unless it be proved by the said witnesses that the testator at the time of pronouncing the same, did desire the persons present, or some of them, to bear witness that such was his will, or to that effect, nor unless such nuncupative will was made in the time of the last sickness of the deceased. *Ibid.*, § 2276.

After six months after the speaking such testamentary words, no testimony shall be received to prove any nuncupative will, unless the said testimony, or the substance thereof, shall have been reduced to writing and sworn to before some judicial officer of the state within six days from the making of said will. *Ibid.*, § 2277.

GEORGIA.

A will of realty or personalty except a nuncupative will, must be in writing, and signed by the testator, or by some other person in his presence, and by his express direction, and attested and subscribed in the presence of the testator, by three or more competent witnesses. Code of 1895, § 3272.

Mutual wills may be made either separately or jointly, and in such case the revocation of one is the destruction of the other. *Ibid.*, § 3256.

A witness may attest by his mark, provided he can swear to the same; but one witness cannot subscribe the name of another, even in his presence and by his direction. *Ibid.*, § 3273.

The question of competency of the witness relates to the time of his testifying; but a witness competent at the time of attestation, cannot defeat the will by rendering himself incompetent prior to the time of probate, but in such cases his testimony shall be received, submitting its credibility to the jury. *Ibid.*, § 3274.

No person leaving a wife or child, or descendants of child, shall, by will, devise more than one-third of his estate to any charitable, religious, educational or civil institution, to the exclusion of such wife or child; and in all cases the will containing such devise shall be executed at least ninety days before the death of the testator, or such devise shall be void. *Ibid.*, § 3277.

A testator may by will dispense with the necessity of his executor making inventory or returns: Provided, the same does not work any injury to creditors or third persons, other than legatees under the will. *Ibid.*, § 3278.

No nuncupative will shall be good that is not proved by the oaths of at least three competent witnesses that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect, nor unless such nuncupative will was made in the time of the last sickness of the deceased, and in the house of his habitation or dwelling, or where he had been resident for the space of ten days, or more, next before the making of such will, except where such person was surprised or taken sick, being from his own home, and died before he returned to the place of his dwelling. *Ibid.*, § 3349.

Application for probate of a nuncupative will must be made before the court within six months after the death of the testator, and the substance of the testamentary dispositions must be reduced to writing within thirty days after the speaking of the same. *Ibid.*, § 3350.

All property, real and personal, may pass by nuncupative wills properly made and proved. *Ibid.*, § 3352.

HAWAII.

No will shall be valid unless it be in writing and signed by the testator, or by some person in his presence and by his express direction, and attested by two or more competent witnesses subscribing their names to the will, in the presence of the testator. Revised Laws of 1905, § 2523.

If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved. *Ibid.*, § 2524.

IDAHO.

Every will other than a nuncupative will, must be in writing, and every will other than an olographic or nuncupative one must be subscribed at the end by the testator, or in his name by some person in his presence, and by his direction and in the presence of two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, and in his presence. The subscription must be made or acknowledged by the testator to them to have been made by him, or by his authority. The testator must also, at the time of subscribing or acknowledging, declare to the witnesses that the instrument is his will. Revised Code of 1908, § 5727.

An olographic will is one that is entirely written, dated and signed, by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed. *Ibid.*, § 5728.

A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. *Ibid.*, § 5729.

If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved. *Ibid.*, § 5730.

A last will and testament, except a nuncupative will, is invalid unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given. *Ibid.*, § 6006.

Nuncupative wills may, at any time within six months after the testamentary words are spoken by the decedent, be admitted to probate on petition and notice as provided for the probate of written wills. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition. *Ibid.*, § 5229.

ILLINOIS.

A will or codicil of real or personal property must be in writing "signed by the testator or testatrix, or by some person in his or her presence, and by his or her direction, and attested in the presence of the testator or testatrix, by two or more credible witnesses, two of whom, declaring on oath or affirmation, before the county court of the proper county, that they were present and saw the testator or testatrix sign said will, testament, or codicil in their presence, or acknowledged the same to be his or her act and deed, and that they believed the testator or testatrix to be of sound mind and memory at the time of signing or acknowledging the same, shall be sufficient proof of the execution of said will," to admit it to record, Revised Statutes of 1908, ch. 148, § 2.

All wills, testaments and codicils, or authenticated copies thereof, proven according to the laws of any of the United States, or the territories thereof, or of any country out of the limits of the United States, and touching or concerning estates within this state, accompanied with a certificate of the proper officer or officers that said will, testament, codicil or copy thereof was duly executed and proved, agreeably to the laws and usages of that state or country in which the same was executed, shall be recorded as aforesaid, and shall be good and available in the law, in like manner as wills made and executed in this state. *Ibid.*, ch. 148, § 9.

A nuncupative will shall be good and available in law for the conveyance of personal property thereby bequeathed, if committed to writing within twenty days after the making thereof, and proven before the county court by two or more credible, disinterested witnesses, who were present at the speaking and publishing thereof, who shall declare, on oath or affirmation, that they were present and heard the testator pronounce the said words, and that they believed him to be of sound mind and memory; and that he or she did at the same time, desire the persons present, or some of them, to bear witness that such was his or her will, or words to that effect, and that such will was made in the time of the last sickness of the testator or testatrix; and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the will was committed to writing within ten days after the death of the testator or testatrix. *Ibid.*, § 15.

INDIANA.

A will except a nuncupative will, must be in writing, signed by the testator, or by some one in his presence, with his consent, and attested and subscribed in his presence, by two or more competent witnesses; and if the witnesses are competent at the time of attesting, their subsequent incompetency will not prevent the probate. Annotated Statutes, Revision of 1908, § 3132.

No nuncupative will shall be valid when more than the value of one hundred dollars is bequeathed, nor unless it be made in the last sickness of the testator, and the subject thereof be reduced to writing within fifteen days after it shall have been declared, and proved by two competent witnesses who shall have heard the testator, in effect, request some of those present to bear witness thereto; and no such nuncupative will shall be proved after six months from the death of the testator, nor until his widow and heirs shall have reasonable notice of the time and place of proving the same. *Ibid.*, § 3133.

Nothing contained in this chapter (§§ 3112-3174) shall prevent any soldier, in actual military service, nor any mariner, at sea, from disposing of his personal estate, in his actual possession, and his wages, by a nuncupative will. *Ibid.*, § 3134.

Any written will that shall have been proven or allowed in any other of the United States or in any foreign country, according to the laws of such state or country, may be received and recorded in this state, in the manner and for the purpose mentioned in the next two following sections. *Ibid.*, § 3149.

Such will shall be duly certified, or a copy of such will and the probate thereof shall be duly certified. *Ibid.*, § 3150.

Such will or copy, and the probate thereof, may be produced by any person interested therein to the circuit court of the county in which there is any estate on which the will may operate; and if said court shall be satisfied that the instrument ought to be allowed as the last will of the deceased, such court shall order the same to be filed and recorded by the clerk; and, thereupon, such will shall have the same effect as if it had been originally admitted to probate and recorded in this state. *Ibid.*, § 3151.

No will executed in this state, and proven or allowed in any other state or country, shall be admitted to probate within this state, unless executed according to the laws of this state. *Ibid.*, § 3152.

IOWA.

Personalty to the value of \$300 may be bequeathed by a verbal will, witnessed by two competent witnesses. A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed. Every other will must be in writing, witnessed by two competent witnesses, and signed by the testator, or by some person in his presence, and by his express direction, writing his name thereto, but if a codicil is duly executed to a will defectively executed and clearly identified in such codicil, the will and codicil shall be considered one instrument, and the execution of both sufficient. Code of 1897, § 3273.

No devise or bequest to a corporation organized under the chapter relating to corporations not for pecuniary profit, or to a foreign corporation of a similar character, shall be valid in excess of one-fourth of the testator's estate after payment of debts, if a spouse, child or parent survive the testator. *Ibid.*, § 3270.

A will probated in any other state or country shall be admitted to probate in this state, without the notice required in the case of domestic wills, on the production of a copy thereof and of the original record of probate, duly authenticated. *Ibid.*, § 3294.

A will executed without this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said will is in writing and subscribed by the testator. *Ibid.*, § 3309.

KANSAS.

A verbal will made in the last sickness shall be valid in respect to personality, if reduced to writing, and subscribed by two competent disinterested witnesses within ten days after the speaking of the testamentary words, and if it be proved by said witnesses that the testator was of sound mind and memory, and not under any restraint, and called upon some person present at the time the testamentary words were spoken to bear testimony to said deposition, *i. e.*, declaration as his will. Every other will shall be in writing, and signed at the end thereof, by the party making the same, or by some other person in his presence, and by his express direction, and shall be attested and subscribed in the presence of such party, by two or more competent witnesses who saw the testator subscribe, or heard him acknowledge the same. General Statutes of 1909, §§ 9846, 9777.

In all actions to contest a will, if it shall appear that such will was written or prepared by the sole or principal beneficiary in such will, who, at the time of writing or preparing the same, was the confidential agent or legal adviser of the testator, or who occupied at the time any other position of confidence or trust to such testator, such will shall not be held to be valid unless it shall be affirmatively shown that the testator had read or knew the contents of such will, and had independent advice with reference thereto. *Ibid.*, § 9787.

Authenticated copies of wills executed and proved according to the laws of any state or territory of the United States, relating to any property in this state, may be admitted to record in the probate court of any county in this state where any part of such property may be situated; and such authenticated copies so recorded shall have the same validity as wills made in this state in conformity with the laws thereof. When any such will or authenticated copy has been or shall hereafter be admitted to record in the probate court of any county in this state where any part of such property may be situated, a copy of such recorded will, with a copy of the order to record the same annexed thereto, certified by the probate judge under the seal of his court, may be filed and recorded in the office of the probate court of any other county in this state where any part of such property is situated; and it shall be as effectual in all cases as the authenticated copy of said will would be if proved and admitted to record by the court. *Ibid.*, § 9800.

A will executed, proved and allowed in any state or country other than the United States and territories thereof, according to the laws of such foreign state or country, may be allowed and admitted to record in this state in the manner and for the purpose mentioned in the following sections. *Ibid.*, § 9801.

A copy of the will and probate thereof, duly authenticated, shall be produced by the executor or by any person interested therein, to the probate court of the county in which there is any estate upon which the will may operate, whereupon said court shall continue the motion to admit such will to probate for the term of two months; and notice of the filing of such application shall be given to all persons interested, in some public newspaper printed or in general circulation in the county where such motion is made, at least three weeks consecutively, the first publication to be at least forty days before the time set for the final hearing of the motion. *Ibid.*, § 9802.

If on hearing it shall appear to the court that the instrument ought to be allowed in this state, the court shall order the copy to be filed and recorded, and the will and the probate and record thereof shall then have the same force and effect as if the will had been originally proved and allowed in the same court in the usual manner; but nothing herein contained shall be construed to give any operation or effect to the will of an alien different from what it would have had if originally proved and allowed in this state. *Ibid.*, § 9803.

No man while married shall bequeath away from his wife more than one-half of his property, nor shall any woman while married bequeath away from her husband more than one-half of her property. But either may consent in writing, executed in the presence of two witnesses, that the other may bequeath more than one-half of his or her property from the one so consenting. *Ibid.*, § 9811.

Any married person having no children may devise one-half of his or her property to other persons than the husband or wife. *Ibid.*, § 9812.

No nuncupative will shall be admitted to record unless the same shall be offered for probate within six months after the death of the testator. *Ibid.*, § 9847.

KENTUCKY.

A will must be in writing, and subscribed by the testator, or in his name by some other person in his presence, and by his direction; and, moreover, if not wholly written by himself, the subscription shall be made, or the will acknowledged in the presence of at least two credible witnesses, who shall subscribe the will with their names in the presence of the testator. Statutes of 1909, § 3950.

A soldier in actual service, or a mariner at sea, may dispose of his personal estate by an unwritten will made within ten days of his death, and in the presence of two competent witnesses present at the same time, and called upon by him to witness his intention, if the testamentary words or their substance be reduced to writing and subscribed by one of the witnesses within sixty days after they were spoken. *Ibid.*, § 3952.

The will of a person domiciled out of this state at the time of his death shall be valid as to his personal property in this state, if it is executed according to the law of the place where he was domiciled. *Ibid.*, § 3953.

When a will of a nonresident relative to estate within this commonwealth has been proved without the same, an authenticated copy and the certificate of probate thereof may be offered for probate in this commonwealth. Where such copy is so offered the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicile, and shall admit such copy to probate as a will of personalty in this commonwealth. And if it appears from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this commonwealth by the law thereof, such copy may be admitted to probate as a will of real estate. *Ibid.*, § 3954.

LOUISIANA.

Wills are divided into (1) nuncupative or open, (2) mystic or sealed, (3) olographic. Revised Civil Code of 1898, art. 1574.

Wills, whether nuncupative or mystic, must be drawn up in writing, either by the testator or by some other person by his direction. *Ibid.*, art. 1575.

Nuncupative wills may be made by public act, or by act under private signature. *Ibid.*, art., 1577.

The nuncupative will by public act must be received by a notary public, in presence of three witnesses residing in the place where the will is executed, or of five not residing there. It must be dictated by the testator, and written by the notary as it is dictated. It must then be read to the testator in the presence of the witnesses. All those formalities must be fulfilled at one time, without interruption, and without turning aside to other acts. *Ibid.*, art. 1578.

This will must be signed by the testator; if he declares he knows not how, or is not able to sign, express mention of his declaration, as also of the cause that hinders him from signing, must be made in the act. *Ibid.*, art 1579.

This will must be signed by the witnesses, or at least by one for all, if the others cannot write. *Ibid.*, art. 1580.

A nuncupative will under private signature must be written by the testator or by any other person, from his dictation; or even by one of the witnesses, in presence of five witnesses residing in the place where the will is received, or of seven residing out of it. Or it will suffice if, in the presence of the same number of witnesses, the testator present the paper, on which he has written his testament, or caused it to be written out of their presence, declaring to them that that paper contains his last will. *Ibid.*, art. 1581.

In either case the will must be read by the testator to the witnesses, or by one of the witnesses to the rest, in presence of the testator; it must be signed by the testator, if he know how or is able to sign, and by the witnesses, or at least by two of them, in case the others know not how to sign, and those of the witnesses who do not know how to sign must affix their mark. This will is subject to no other formality than those prescribed by this and the preceding article. *Ibid.*, art. 1582.

In the country it suffices for the validity of nuncupative wills under private signature, if the will be passed in the presence of three witnesses residing in the place where the will is received, or of five residing out of it, if more cannot be had. *Ibid.*, art. 1583.

The mystic or secret testament, otherwise called the closed testament, is made in the following manner: The testator must sign his dispositions, whether he has written them himself or has caused them to be written by another person. The paper containing those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus closed and sealed to the notary and three witnesses, or he shall cause

it to be closed and sealed in their presence. Then he shall declare to the notary, in presence of the witnesses, that the paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper or on the sheet that serves as its envelope, and that act shall be signed by the testator and by the notary and the witnesses. *Ibid.*, art. 1584.

All that is above prescribed shall be done without interruption or turning aside to other acts; and in case the testator, by reason of any hindrance that has happened since the signing of the will, cannot sign the act of superscription, mention shall be made of the declaration made by him thereof, without its being necessary, in that case, to increase the number of witnesses. *Ibid.*, art. 1585.

If any of the witnesses to the act of superscription know not how to sign, express mention shall be made thereof. In all cases, the act must be signed at least by two witnesses. *Ibid.*, art. 1587.

The olographic testament is that which is written by the testator himself. In order to be valid, it must be entirely written, dated and signed by the hand of the testator. It is subject to no other form, and may be made anywhere, even out of the state. *Ibid.*, art. 1588.

Erasures not approved by the testator are considered as not made; and words added by the hand of another, as not written. *Ibid.*, art. 1589.

Wills cannot be witnessed by women of any age, male children under sixteen years of age, persons insane, deaf, dumb or blind, nor persons declared by the criminal laws incapable of exercising civil functions. *Ibid.*, art. 1591.

Wills cannot be witnessed by those who are constituted heirs or named legatees; but mystic wills are excepted. *Ibid.*, arts. 1592, 1593.

By the residence of the witnesses in the place where the will is executed is understood their residence in the parish where that will is made; that residence is necessary only when it is expressly required by law. *Ibid.*, art. 1594.

Wills made in foreign countries, or the states and other territories of the Union, shall take effect in this state, if they be clothed with all of the formalities prescribed for the validity of wills in the place where they have been respectively made. *Ibid.*, art. 1596.

The wills of persons employed in armies in the field or in a military expedition may be received by a commissioned officer, in presence of two witnesses. *Ibid.*, art. 1597.

If the testator is sick or wounded, they may be received by the physician or surgeon attending him, assisted by two witnesses. *Ibid.*, art. 1598.

These wills are subject to no other formalities than that of being reduced to writing and being signed by the testator, if he can write, by the persons receiving them, and by the witnesses. *Ibid.*, art. 1599.

The will, made in the form above prescribed, shall be null, six months after the return of the testator to a place where he has an opportunity to employ the ordinary forms. *Ibid.*, art. 1600.

Wills, made during a voyage at sea, may be received by the captain or master, in presence of three witnesses taken by preference from among the passengers; in default of passengers from among the crew. *Ibid.*, art. 1601.

The will made at sea can contain no disposition in favor of any of the persons employed on board the vessel, unless they be relations of the testator. *Ibid.*, art. 1602.

This will, like the preceding one, is subject to no other formality than that of being reduced to writing, and being signed by the testator, if he can write, by him who receives it, and by those in whose presence it is received. *Ibid.*, art. 1603.

The will made at sea shall not be valid unless the testator die at sea, or within three months after he has landed in a place where he is able to make it in the ordinary forms. *Ibid.*, art. 1604.

MAINE.

A will of real or personal estate may be made in writing signed by the testator or by some person for him, at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will. Revised Statutes of 1903, ch. 76, § 1.

A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to this chapter (chap. 76). Revised Statutes of 1903, ch. 76, § 18.

No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time when they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken. *Ibid.*, § 19.

No nuncupative will is effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will. *Ibid.*, § 20.

MARYLAND.

A will of real or personal property must be in writing, and signed by the testator, or by some other person for him, in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more credible witnesses. Public General Laws of 1904, art. 93, §§ 314, 317.

No nuncupative will shall hereafter be valid in this state; but any soldier being in actual military service, or any mariner being at sea, may dispose of his movables, wages and personal estate as heretofore. *Ibid.*, § 326.

Every will or other testamentary instrument made out of the state shall be held to be valid in Maryland, if the same be made according to the forms required by the law of the place where the same was made or by the law of the place where the testator was domiciled when the same was made, or according to the forms required by the law of this state; and if the testator was originally domiciled in Maryland, although at the time of making the will or at the time of his death he may be domiciled elsewhere, the said will or testamentary instrument then so executed shall be admitted to probate in any orphans' court of this state; and when so admitted shall be governed by and construed and interpreted according to the law of Maryland, without regard to the *lex domicilii*, unless the testator shall expressly declare a contrary intention in said will or testamentary instrument. *Ibid.*, § 327.

MASSACHUSETTS.

A will of real or personal estate must be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed, in his presence by three or more competent witnesses.

A soldier in actual military service or a marine at sea may dispose of his personal property by a nuncupative will. Revised Laws of 1902, ch. 135, § 136.

MICHIGAN.

A will of real or personal property, made within the state, must, except nuncupative wills, mentioned in the following section be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed, in the presence of the testator, by two or more competent witnesses. Compiled Laws of 1897, § 9266.

Nothing contained herein shall affect the validity of a nuncupative will, in which the value of the estate bequeathed shall not exceed three hundred dollars, provided the same shall be proved by two competent witnesses; nor

to prevent any soldier, being in actual military service, nor any mariner, being on shipboard, from disposing of his wages and other personal estate by nuncupative will, as he might heretofore have done. *Ibid.*, § 9267.

MINNESOTA.

A will of real and personal property made within the state may be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed, in his presence, by two or more competent witnesses. Revised Laws of 1905, § 3659.

Nuncupative wills shall not be valid unless made by a soldier in actual service or by a marine at sea, and then only as to personal estate. *Ibid.*, § 3661.

A will made out of the state and valid according to the laws of the state or country in which it was made, or of the testator's domicile, if in writing and signed by the testator, may be proved and allowed in this state, and shall thereupon have the same effect as if it had been executed according to the laws of the state. *Ibid.*, § 3662.

Every will duly proved and allowed outside of this state, in accordance with the laws in force in the place where proved, may be allowed, filed, and recorded in any county in which the testator left property upon which such will may operate. *Ibid.*, § 3683.

When a copy of such will, and of the probate thereof, duly authenticated, shall be presented to the court by the executor or other person interested in the will, with a petition for its allowance and for letters, the court shall appoint a time and place of hearing, notice of which shall be given as in the case of an original petition for the probate of a will. *Ibid.*, § 3684.

If on the hearing the court shall find from the copies before it that the probate of such will was granted by a court of competent jurisdiction, and it does not appear that the order or decree so granting it is not still in force, the copy and the probate thereof shall be filed and recorded, and the will shall have the same force and effect as if originally proved and allowed in such court. *Ibid.*, § 3685.

Nuncupative wills, at any time within six months after the testamentary words are spoken by the decedent, may be admitted to probate on petition and notice, as provided for in case of other wills. The petition shall allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing shall accompany the petition. No such will shall be admitted to probate except upon the evidence of at least two credible and disinterested witnesses. *Ibid.*, § 3691.

MISSISSIPPI.

A will may be made in writing signed by the testator or testatrix, or by some other person in his or her presence, and by his or her express direction; and, moreover, if not wholly written and subscribed by himself or herself it shall be attested by two or more credible witnesses, in the presence of the testator or testatrix. *Ibid.*, § 5078.

A nuncupative will shall not be established unless it be made in the time of the last sickness of the deceased, at his or her habitation, or where he or she hath resided for ten days next preceding the time of his or her death except when such person is taken sick from home and die before his or her return to such habitation, nor where the value bequeathed exceeds one hundred dollars, unless it be proved by two witnesses that the testator or testatrix called on some person present to take notice or bear testimony that such is his or her will, or words to that effect. *Ibid.*, § 5082.

After six months have elapsed from the time of speaking the alleged testamentary words, testimony shall not be received to prove a nuncupative will, unless the words, or the substance thereof, shall have been reduced to writing within six days after speaking the same. *Ibid.*, § 5083.

Any soldier in actual service, or any mariner being at sea, may dispose of and bequeath his goods and chattels as he might heretofore have done, anything in this chapter (§§ 5078-5092) to the contrary notwithstanding. *Ibid.*, § 5085.

Authenticated copies of wills, proven according to the laws of any of the states of the Union, or of the territories, or of any foreign country, and affecting or disposing of property within this state, may be admitted to probate in the proper court; but such will may be contested as the original might have been if it had been executed in this state, or the original will may be proven and admitted to record here. *Ibid.*, § 2004.

MISSOURI.

A will must be in writing signed by the testator, or by some person, by his direction, in his presence; and attested by two or more competent witnesses subscribing their names to the will in the presence of the testator. Annotated Statutes of 1906, § 4304.

No judge nor clerk of a probate court shall draw or witness any will over with such court may have jurisdiction. *Ibid.*, § 1750.

No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars; nor unless the same be proved by two witnesses, who were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return. *Ibid.*, § 4626.

Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property, as he might have done by the common law, or by reducing the same to writing. *Ibid.*, § 4627.

No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, or the substance thereof were reduced to writing within thirty days after they were spoken. *Ibid.*, § 4628.

Any person owning real or personal estate in this state may devise or bequeath such property by last will, executed and proved, if real estate be devised, according to the laws of this state, or if personal estate be bequeathed, according to the laws of this state or of the country, state or territory in which the will shall be made. *Ibid.*, § 4634.

Authenticated copies of such wills, and the probate thereof, shall be recorded in the same manner as wills executed and proved in this state, and shall be admitted in evidence in the same manner and with like effect. *Ibid.*, § 4635.

MONTANA.

Every will, other than a nuncupative will, must be in writing; and every will, other than a holographic will, and a nuncupative will, must be subscribed at the end thereof by the testator, or in his name by some person in his presence and by his direction, in the presence of two attesting witnesses, or the subscription must be acknowledged by the testator to them, to have been made by him or by his authority. At the time of subscribing or acknowledging, the testator must declare to the attesting witnesses that the instrument is his will. Each of the witnesses must sign his name as a witness, at the end of the will, at the testator's request and in his presence. Revised Codes of 1907, § 4726.

A holographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed. *Ibid.*, § 4727.

A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction,

must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. *Ibid.*, § 4728.

A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will. *Ibid.*, § 4729.

A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition. *Ibid.*, § 4730.

A will of real or personal property, or both, or a revocation thereof made out of this state by a person not having his domicile in this state, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state, and according to the provisions of this chapter (§§ 4723-4762). *Ibid.*, § 4734.

A nuncupative will is not required to be written, nor to be declared or attested with any formalities. *Ibid.*, § 4737.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been, at the time, in expectation of immediate death from injury received the same day. *Ibid.*, § 4738.

No proof must be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. *Ibid.*, § 4739.

NEBRASKA.

A will of real or personal property made within this state, except nuncupative wills mentioned in the following section, must be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. Annotated Statutes of 1907, § 4992.

No nuncupative will shall be good, when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses, at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness of the deceased, and in the place of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation. *Ibid.*, § 4993.

After six months shall have passed after speaking any testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after said testamentary words were spoken. Nothing herein contained shall prevent any soldier, being in actual service, nor any mariner, being on shipboard, from disposing of his wages, and other personal estate by nuncupative will. *Ibid.*, § 4994.

All wills which shall have been duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed and recorded in the probate

court of any county in which the testator shall have real and personal estate on which such will may operate, in the manner prescribed in the following sections. *Ibid.*, § 5009.

When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in case of an original will presented for probate. *Ibid.*, § 5010.

If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this state as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court. *Ibid.*, § 5011.

NEVADA.

No will, except such nuncupative wills as are mentioned in this Act, shall be valid unless it be in writing, and signed by the testator and sealed with his seal, or by some persons in his presence, and by his express direction, and attested by at least two competent witnesses, subscribing their names to the will in the presence of the testator. *Compiled Laws, 1900, § 3073.*

No nuncupative or verbal will shall be good where the estate bequeathed exceeds the value of one thousand dollars, nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some one present to bear witness that such was his will, or words of like import, nor unless such nuncupative will was made at the time of the last sickness of the deceased. *Ibid.*, § 3075.

No proof shall be received of any nuncupative will unless it be offered within three months after speaking the testamentary words. *Ibid.*, § 3076.

No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved unless the testamentary words, or the substance thereof, be first committed to writing by the probate judge, and process be issued to call in the widow, should she be a resident of the territory, or other person or persons interested as heirs of the testator, residing in the territory, to contest the probate of such will, if they think proper. *Ibid.*, § 3077.

Property may be disposed of and taken under holographic wills. Such wills shall be valid and have full effect for the purpose for which they are intended. *Ibid.*, § 3092.

An holographic will is one that is entirely written by the hand of the testator himself. It is subject to no other form and may be made in or out of this state and need not be witnessed. *Ibid.*, § 3093.

An holographic will may be proved in the same manner as other private writings are proved. *Ibid.*, § 3094.

All wills which shall have been duly proved and allowed in any other of the United States, or any territory thereof, or in any foreign country, or state, may be admitted to probate by the district court of any county in which the deceased shall have any estate; provided, it has been executed in conformity with the laws of the place where made. *Ibid.*, § 2807.

When a copy of a will as mentioned in the preceding sections, and probate thereof, duly authenticated, shall be filed in the clerk's office, with a petition of letters, notice shall be given for the hearing thereof, and such proceedings shall be had as in case of an original will for probate, and with like force and effect. *Ibid.*, § 2808.

NEW HAMPSHIRE.

No will shall be effectual to pass any real or personal estate, or to change or in any way affect the same, unless made by a person of the age of twenty-one years, of sound mind, in writing, signed by the testator or by some person in his presence and by his express direction, and attested and sub-

scribed in his presence by three or more credible witnesses. A will not executed under seal shall be as effectual as though sealed by the testator. Public Statutes of 1901, ch. 186, § 2.

A will made out of this state, and valid according to the laws of the state or country where it was executed may be proved and allowed in this state, and shall thereupon be as effective as it would have been if executed according to the laws of this state. *Ibid.*, § 5.

A soldier in actual military service or a mariner or a seaman when at sea, may dispose of his movables and personal estate as he might heretofore have done. *Ibid.*, § 16.

No nuncupative will shall be valid where the personal estate bequeathed exceeds in value one hundred dollars, unless declared in the presence of three witnesses who were requested by the testator to bear witness thereto, in his last sickness and his usual dwelling, except when he was taken sick from home and died before his return; nor unless a memorandum thereof was reduced to writing within six days, and presented for probate within six months from the making thereof. *Ibid.*, § 17.

NEW JERSEY.

A will must be signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will, in the presence of two witnesses, present at the same time, who shall subscribe their names thereto as witnesses, in the presence of the testator. General Statutes of 1895, p. 3760, § 22.

That no nuncupative will heretofore made or hereafter to be made shall be good where the estate thereby bequeathed shall exceed the value of eighty dollars, unless the same be proved by the oaths of three witnesses at least, who were present at the making thereof, nor unless it be proved that the testator at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his or her will, or words to that effect nor unless such nuncupative will was made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days or more, next before the making of such will, except where such person was surprised or taken sick away from his or her dwelling. *Ibid.*, pp. 3759, 3760, § 11.

That after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony or the substance thereof were committed to writing within six days after making the said will. *Ibid.*, § 12.

That no letters testamentary or probate of any nuncupative will, shall pass the seal of any court, till fourteen days at least after the decease of the testator shall be fully expired; nor shall any nuncupative will at any time be received to be proved, unless process hath first issued to call in the widow or next of kindred to the deceased, to the end that they may contest the same, if they please. *Ibid.*, § 13.

That notwithstanding this act, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movables, wages, and personal estate, as he might have done before the making of this act. *Ibid.*, § 16.

NEW MEXICO.

Any person capable of making a will would do better by making it in writing than verbally, but a verbal will may be valid, that on condition that in either case they give it all the validity possible, as well as the freeness of the will, the proof of soundness of mind and entire judgment. Compiled Laws, 1897, § 1948.

A written will shall be signed by the testator, who, if unable or not knowing how to sign, shall request some reliable person to sign for him, and shall

¹ This statutory provision applies only to wills of persons dying after July 4, 1850.

be attested by two or more able and qualified witnesses, who must be present, see the testator sign the will, or some one sign it for him, at his request, as and for his last will and testament, and must sign as witnesses at his request, in his presence, and in the presence of each other. *Ibid.*, §§ 1950, 1952, 1975.

A verbal will shall be attested by the same number of witnesses required for the written ones, and, besides, two witnesses, there being no more, possessing the same qualifications as required for the written will, to testify that the testator, male or female, was in possession of sound mind and entire judgment. *Ibid.*, § 1950.

That whenever application is made before the probate courts for the probating of a will which has been probated according to the laws of any of the United States or territories, or of any country out of the limits of the United States, a copy of such will and the record of probating thereof, attested by the clerk of the court in which the will was admitted to probate, and the seal of the court annexed, if there be a seal, together with the certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in such court and shall have the same force and effect as the original will, if probated in said court: provided, that the validity of such will may be contested when probated in such courts. *Ibid.*, § 2077.

In event an executor shall have been named in any will which has been probated according to the laws of any of the United States or territories, or of any country out of the limits of the United States, and such person shall have qualified as the executor of said will in said state, territory or country where said will was originally probated, which person shall, when said will is probated in this territory, in accordance with this act, have issued to him letters testamentary, by the courts of this territory upon such person entering into good and sufficient bond, to be fixed and approved by the probate court, with two or more good and sufficient sureties having property situated in this territory, but in event the testator shall have provided in such will that such executor shall not be required to give bond, then such letters shall issue to such executor so named, without his giving such bond. Provided, that any creditor or any beneficiary under said will residing in this territory, shall have the right by petition presented at any term of said court, to have such executor summoned by such court to appear before the same and show cause why such bond shall not be required; and upon such hearing, in event the court shall have reason to believe that the interests of said creditor or beneficiary under said will are liable to be prejudiced by the conduct of such executor, then said court may require such executor to enter into bond as above provided. *Ibid.*, § 2078.

NEW YORK.

No nuncupative or unwritten will, bequeathing personal estate, shall be valid, unless made by a soldier while in military service, or by a mariner, while at sea. Decedent Estate Law, § 10; Birdseye, C. & G. Cons. Laws, 1909, p. 944.

Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

1. It shall be subscribed by the testator at the end of the will.
2. Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made to each of the attesting witnesses.
3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.
4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator. *Ibid.*, § 21, p. 952.

The witnesses to any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name

to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions, shall forfeit fifty dollars, to be recovered by any person interested in the property devised or bequeathed, who will sue for the same. Such omission shall not effect the validity of any will, nor shall any person liable to the penalty aforesaid, be excused or incapacitated on that account, from testifying respecting the execution of such will. *Ibid.*, § 22, p. 958.

A will of real or personal property, executed as prescribed by the laws of the state, or a will of personal property executed without the state, and within the United States, the Dominion of Canada, or the Kingdom of Great Britain and Ireland, as prescribed by the laws of the state or country where it is or was executed, or a will of personal property executed by a person not a resident of the state, according to the laws of the testator's residence, may be admitted to probate in this state. *Ibid.*, § 23, p. 959.

NORTH CAROLINA.

No last will or testament shall be good or sufficient in law, to convey or give any estate, real or personal, unless such last will shall have been written in the testator's lifetime, and signed by him, or by some other person in his presence, and by his direction, and subscribed in the presence of two witnesses at least, no one of whom shall be interested in the devise or bequest of the said estate, except as stated below. Or, unless such last will and testament be found among the valuable papers and effects of any deceased person, or shall have been lodged in the hands of any person for safe-keeping, and the same shall be in the handwriting of such deceased person, with his name subscribed thereto, or inserted in some part of such will, and if such handwriting shall be proved by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be, then such will shall be sufficient to give or convey any real or personal estate. Revisal of 1908, § 3113.

No person, on account of being an executor of a will shall be incompetent to be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof. *Ibid.*, § 3119.

If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, estate, interest, legacy or appointment of or affecting any real or personal estate shall be thereby given or made, such devise, estate, interest, legacy or appointment, shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person, or wife, or husband, be void; and such person so attesting shall be admitted as a witness to prove the execution of such will or the validity or invalidity thereof. *Ibid.*, § 3120.

Wills and testaments must be admitted to probate only in the following manner:

1. In case of a written will, with witnesses, on the oath of at least two of the subscribing witnesses, if living; but, when any one or more of the subscribing witnesses to such will are dead, or reside out of the state, or cannot after due diligence be found within the state, or are insane or otherwise incompetent to testify, then such proof may be taken of the handwriting, both of the testator and of the witness or witnesses so dead, absent, insane or incompetent and also of such other circumstances as will satisfy the clerk of the superior court of the genuineness, and the due execution of such will. In cases where the testator executed the will by making his mark, and where any one or more of the subscribing witnesses are dead or reside out of the state, or are insane or otherwise incompetent to testify, it shall not be necessary to prove the handwriting of the testator, but proof of the handwriting of the subscribing witness or witnesses so dead, absent, insane or incompetent shall be sufficient. The probate of all wills heretofore taken in compliance with the requirements of this section are hereby declared to be valid.

2. In case of holograph wills on the oath of at least three credible witnesses, who state that they verily believe such will and every part thereof is in the handwriting of the person whose will it purports to be, and whose name must be subscribed thereto, or inserted in some part thereof. It must further appear on the oath of some one of said witnesses, or of some other credible person, that such will was found among the valuable papers and effects of the decedent, or was lodged in the hands of some person for safekeeping.

3. In case of a nuncupative will, on the oath of at least two credible witnesses present at the making thereof, who state that they were specially required to bear witness thereto by the testator himself. It must also be proved that such nuncupative will was made in the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days unless he died on a journey or from home. No nuncupative will shall be proved by the witnesses after six months from the making thereof, unless it was put in writing within ten days from such making; nor shall it be proved till a citation has been issued or publication been made for six weeks in some newspaper published in the state, to call in the widow and next of kin to contest will if they think proper. *Ibid.*, § 3127.

When a will, made by a citizen of this state, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this state, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording said copy as by law might be taken upon the production of the original. *Ibid.*, § 3130.

Whenever any will, made by a citizen or subject of any other state or country is duly proved and allowed in such state or country according to the laws thereof, a copy of exemplification of such will, duly certified and authenticated by the clerk of the court in which such will has been proved and allowed if within the United States, or by any ambassador, minister, consul, or commercial agent of the United States under his official seal, when produced or exhibited before the clerk of the superior court of any county wherein any property of the testator may be, shall be allowed, filed and recorded in the same manner as if the original and not the copy had been produced, proved and allowed before such clerk. But when any will contains any devise or disposition of real estate in this state, such devise or disposition shall not have any validity or operation, unless the will is executed according to the laws of this state, and that fact must appear affirmatively in the certified probate or exemplification of the will; and if it do not so appear, the clerk before whom the copy is exhibited shall have power to issue a commission for taking proofs, touching the execution of the will, as prescribed in the preceding section; and the same may be adjudged duly proved, and shall be recorded as herein provided. *Ibid.*, § 3133.

NORTH DAKOTA.

Every will other than a holographic or nuncupative will must be in writing and subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; the testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request, and in his presence. Revised Codes, 1905, § 5093.

To make a nuncupative will valid to entitle it to be admitted to probate the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must at the time have been in actual military service in the field or doing duty on shipboard at sea and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from injury received the same day. *Ibid.*, § 5089.

An holographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form and may be made in or out of this state and need not be witnessed. *Ibid.*, § 5092.

A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. *Ibid.*, § 5094.

A witness to a written will must write with his name his place of residence; and a person who subscribes a testator's name by his direction must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. *Ibid.*, § 5095.

A will of real or personal property, or both, or a revocation thereof made out of this state by a person not having domicile in this state is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it was made in this state and according to the provisions of this chapter. *Ibid.*, § 5097.

Every will duly proved and allowed in any of the territories, or in any other of the United States, or the District of Columbia, or in any foreign country or state, may be allowed and recorded in the county court of any county in which the testator shall have left any estate, or any estate for which claim is made. When a copy of the will or a probate thereof, duly authenticated shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing; notice whereof must be given as provided for an original petition for the probate of a will. If, on the hearing it appears upon the face of the record that the will has been proved, allowed and admitted to probate in any of the territories, or any of the states of the United States, the District of Columbia, or any foreign country or state, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this state, it must be admitted to probate, be certified in like manner according to the facts, and recorded, and have the same force and effect as a will first admitted to probate in this state, and letters testamentary or of administration with the will annexed issued thereon. *Ibid.*, § 8037.

An executor or administrator appointed under the provisions of this article must qualify in the same manner as other executors or administrators and thereafter has like powers, duties and obligations respecting the property of the decedent within this state. *Ibid.*, § 8038.

Every executor, administrator or guardian appointed in, but residing out of the state shall before entering upon the duties of his trust, in writing, appoint an agent residing in the county where he is appointed and shall by such writing stipulate and agree that the service of any legal process against him as such executor, administrator or guardian if made on said agent shall be of the same legal effect as if made on himself personally within the state. Such writing shall give the proper address of such agent and shall be filed in the office of the judge of the county court where such appointment is made and the notice to creditors shall state the name and address of such agent. *Ibid.*, § 8039.

OHIO.

Every last will and testament (except nuncupative wills hereinafter provided for) shall be in writing, and may be handwritten or typewritten, and such will shall be signed at the end thereof by the party making the same, or by some other person in his presence and by his express direction,

and shall be attested and subscribed in the presence of such party, by two or more competent witnesses, who saw the testator subscribe, or heard him acknowledge the same. Annotated Statutes, 1908, § 5916.

In all cases where a will, or an authenticated copy of a will has been, or shall be admitted to probate or to record in any county in Ohio, and a will of later date, or an authenticated copy of a will of a later date executed and proved, according to the laws of any other state or territory in the United States, relative to any property in the state of Ohio, shall be presented to the same court for admission to probate or to record, said court of probate, upon giving notice to the widow or husband, and next of kin of the testator, and to the executor or administrator with the will annexed of the instrument earlier in date, and the beneficiaries named therein, in such manner and for such time as the court shall direct or approve, shall have the same power and jurisdiction as to admitting such later will to probate or to record as it would possess, had no will or authenticated copy of a will ever been admitted to probate or to record, and the proceedings connected with such admission to probate or to record shall be in all respects the same as if no other will had ever been admitted to probate or to record. *Ibid.*, § 5929-b.

Authenticated copies of wills, executed and proved according to the laws of any state or territory of the United States, relative to any property in the state of Ohio, may be admitted to record in the probate court of any county in this state, where any part of such property may be situated; and such authenticated copies, so recorded, shall have the same validity in law as wills made in this state, in conformity with the laws thereof, are declared to have: provided, that where any such will, or authenticated copy has been or shall hereafter be admitted to record, in the probate court of any county in this state, where any part of such property may be situated, a copy of such recorded will, with the copy of the order to record the same, annexed thereto, certified by the probate judge, under the seal of his court, may be filed and recorded in the office of the probate judge of any other county in this state, where any part of such property is situated, and it shall be as effectual, in all cases, as the authenticated copy of said will would be, if proved and admitted to record by the court. *Ibid.*, § 5937.

A will executed, proved and allowed, in any country other than the United States and territories thereof, according to the laws of such foreign state or country, may be allowed and admitted in this state, in the manner and of the purpose mentioned in the following sections. *Ibid.*, § 5938.

No lands, tenements, or hereditaments, shall pass to any devisee in a will, who, shall know of the existence thereof, and have the same in his power to control, for the term of three years, unless, within that time, he shall cause the same to be offered for, or admitted to, probate; and by such neglect, the estate devised to such devisee shall descend to the heirs of the testator. *Ibid.*, 5943.

OKLAHOMA.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed.

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must at the time be in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from injury received the same day. *Compiled Laws, 1909, § 8894.*

An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed. Every will, other

than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person, in his presence, and by his direction, must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must at the time of subscribing or acknowledging the same declare to the attesting witnesses that the instrument is his will; and

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence.

A nuncupative will is not required to be in writing, nor be declared or attested with any formalities. *Ibid.*, § 8898.

A will of real or personal property, or both or a revocation thereof, made out of this state by a person not having his domicile in this state, is as valid when executed according to the law of the place in which the same was made or in which the testator was at the time domiciled, as if it were made in this state according to the provisions of this article. *Ibid.*, § 8901.

No will or revocation is valid unless executed either according to the provisions of this article or according to the law of the place in which it was made or in which the testator was at the time domiciled. *Ibid.*, § 8902.

That from and after the passage of this act, it shall be unlawful for any person or persons to whom letters testamentary or of administration have been or may hereafter be granted, by the proper authority in any of the United States or territories thereof, to maintain or defend any suit or action, and to prosecute and recover any claim in the courts of the state of Oklahoma, in the same manner as if the letters testamentary or of administration, or a copy thereof, certified under the seal of the authority granting the same, shall be sufficient evidence to prove the granting thereof, and that the person or persons therein named, as the case may be, hath or have administration; provided, nevertheless, that the courts in which any action may be brought by any non-resident executor or administrator shall have power, and such power is hereby given to the said court, upon motion, to require from such person or persons the security now required by law in like case from a resident administrator or executor. *Ibid.*, § 5249.

OREGON.

A will must be signed by the testator, or some other person under his direction, in his presence, and shall be attested by two or more competent witnesses subscribing their names to the will in the presence of the testator. *Annotated Codes and Statutes, 1901, § 5548.*

Every person who shall sign the testator's name to any will by his direction shall subscribe his own name as witness to such will, and state that he subscribed the testator's name at his request. *Ibid.*, § 5549.

Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing. *Ibid.*, § 5558.

No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. *Ibid.*, § 5590.

No probate of any nuncupative will shall be granted for fourteen days after the death of the testator; nor shall any nuncupative will be at any time proved unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next kin of the deceased, that they may contest the will if they think proper. *Ibid.*, § 5560.

If such will be probated in any other state or territory of the United States, or in any foreign country or state, copies of such will and of the probate thereof, certified by the clerk of the court in which such will was probated, with the seal of the court affixed thereto, if there be a seal, together with a certificate of the chief judge or presiding magistrate that the certificate is in due form and made by the clerk or other person having the legal custody of the record, shall be recorded in the same manner as wills executed and proved in this state, and shall be admitted in evidence in the same manner and with like effect. *Ibid.*, § 5562.

Any such will may be contested and annulled within the same time and in the same manner as wills executed and proven in this state. *Ibid.*, § 5563.

Every will shall be in writing and unless the person making the same shall be prevented by the extremity of his last sickness, shall be signed by him at the end thereof, or by some person in his presence, and by his express direction and in all cases shall be proved by the oaths or affirmation of two or more competent witnesses, otherwise such will shall be of no effect. *Ibid.*, p. 1066, § 1.

No nuncupative will shall be admitted to probate nor shall the letters testamentary thereon be issued till fourteen days after the death of the decedent be fully expired, nor shall any nuncupative will, at any time, be admitted to probate, unless process have first issued to call in the widow if any, and such of his relation or next kin as would be entitled to the administration of his estate, in case of intestacy to contest the same, if they please. *Ibid.*, p. 1068, § 5.

No testimony shall be received to prove any nuncupative will after six months elapsed from the speaking of the pretended testamentary words, unless the said testimony, or the substance thereof were committed to writing within six days after the making of such will. *Ibid.*, § 6.

Copies of wills and testaments proved in any other state or country according to the laws thereof and duly authenticated, may be offered for probate before any register having jurisdiction, and proceedings thereon may be had, with the same effect so far as respects the granting of letters testamentary, or of administration with the will annexed, as upon the originals; and if the executor or other person producing any such copy shall produce also therewith of the record of the proceedings for the probate of the original thereof, and of the letters testamentary or other authority to administer issued thereon, attested by the person having the power to receive the probate of such original, in the place where it was proved, with the seal of office, if there be one, annexed, together with the certificate of the chief judge or presiding magistrate of the state, country, county or district where such original was proved, that the same appears to have been duly proved, and to be of force, and that the attestation is in due form, such copies and proceedings shall be deemed sufficient proof, unless the contrary be shown, for the granting of letters testamentary or of administration, with the will annexed, as the case may require, without the production or examination of the witnesses attesting such will. *Ibid.*, § 7.

PENNSYLVANIA.

Every will shall be in writing and unless the person making the same shall be prevented by the extremity of his last sickness shall be signed by him at the end thereof or by some person in his presence and by his express direction; and in all cases, shall be by the oaths or affirmations of two or more competent witnesses, otherwise such will shall be of no effect. *Purdon's Digest*, 13th Ed., p. 5120, § 6.

Every last will or testament heretofore made or hereafter to be made, excepting such as may have been finally adjudicated, prior to the passage of this act, to which the testator hath made his mark or cross, shall be deemed and taken to be valid in all respects; provided the other requisites, under existing laws, are complied with. *Ibid.*, p. 5126, § 7.

Provided—That personal estate may be bequeathed under the following restrictions:

1. Such will shall in all cases be made during the last sickness of the testator and in the house of his habitation or dwelling, or where he has resided for the space of ten days or more, next before the making of such will; except where such person shall be surprised by sickness, being from his own house, and shall die before returning thereto.

2. Where the sum or value bequeathed shall exceed one hundred dollars, it shall be proved that the testator at the time of pronouncing the bequest, did bid the persons present, or some of them to bear witness that such was his will, or to that effect, and in all cases, the foregoing requisites shall be proved by two or more witnesses who were present at the making of such will. *Ibid.*, p. 5127, § 8.

No testimony shall be received to prove any nuncupative will after six months elapsed from the speaking of the pretended testamentary words unless the said testimony, or the substance thereof were committed to writing within six days after the making of such will. *Ibid.*, p. 5128, § 9.

Provided that notwithstanding this act any mariner at sea, or any soldier being at actual military service may dispose of his movables, wages, and personal estate as he might before the making of this act. *Ibid.*, § 10.

Provided that nothing in this act contained shall be construed to apply to the disposition of personal estate by a testator whose domicile is out of this commonwealth. *Ibid.*, § 11.

PHILIPPINE ISLANDS.

Whenever all the heirs of a deceased person are of lawful age and legal capacity and there are no debts due from the intestate estate, or all the debts have been paid by the heirs, the heirs may by a family council as known under Spanish law, or by agreement between themselves duly executed in writing, apportion and divide the estate among themselves, as they may see fit, without proceedings in court. General Laws and Resolutions, 1900, 1901, § 596.

But if it shall appear, at any time within two years after such settlement and distribution of the estate, that there are debts outstanding against the estate which have not been paid, any creditor may compel the settlement of the estate in the courts in the manner hereinafter provided, unless his debt shall be paid, with interest; and the administrator appointed by the court may recover the assets of the estate from those who have received them for the purpose of paying the debts; and the real estate belonging to the deceased shall remain charged with liability to creditors for the full period of two years after such distribution, notwithstanding any transfers thereof that may have been made. *Ibid.*, § 597.

Such distribution of an estate outside the court shall not be effective unless all the heirs assent thereto in writing. *Ibid.*, § 598.

A will executed by a Spaniard, or a resident of the Philippine Islands, before the date on which this act shall come into force, shall be valid and allowed, if duly executed in accordance with the laws before that date prevailing in the Philippine Islands relating to the execution of wills, whether the will be an open will or a sealed will, or one termed a verbal one under that law, but such will must be established and the estate administered in accordance with the provisions of this code. *Ibid.*, § 617.

No will except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The attestation shall state the fact, that the testator signed the will or caused it to be signed by some other person, at his express direction, in the presence of three witnesses and that they attested and subscribed it in his presence, and in the presence of each other. But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided. *Ibid.*, § 618.

A will made out of the Philippine Islands which might be proved and allowed by the laws of the state or country in which it was made, may be proved, allowed and recorded in the Philippine Islands, and shall have the same effect as if executed according to the laws of these Islands. *Ibid.*, § 635.

A will made within the Philippine Islands by a citizen or subject of another state or country, which is executed in accordance with the law of the state or country of which he is a citizen or subject, and which might be proved and allowed by the law of his own state or country, may be proved, allowed and recorded in the Philippine Islands, and shall have the same effect as if executed according to the laws of these Islands. *Ibid.*, § 636.

Wills proved and allowed in the United States or any state or territory thereof or in a foreign state or country, according to the laws of such state, territory or country may be allowed, filed and recorded in the Court of the First Instance or the province in which the testator has real or personal estate on which such will may operate. *Ibid.*, § 637.

When a copy of such will and the probate and allowance thereof, duly authenticated, is produced by the executor, or other person interested, to the Court of First Instance, such court shall appoint a time and place of hearing and notice shall be given as in case of an original will presented for allowance. *Ibid.*, § 638.

RHODE ISLAND.

A will shall be signed by the testator, or by some other person for him, in his presence, and by his express direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary, and no other publication shall be necessary. *General Laws, 1909, chap. 254, § 13, p. 883.*

A soldier in actual military service or any mariner or seaman being at sea may dispose of his personal estate by will as he might heretofore have done. *Ibid.*, § 20, p. 884.

SOUTH CAROLINA.

All wills and testaments of real and personal property shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of said devisor, and of each other, by three or more credible witnesses, or else they shall be utterly void and of no effect. *Code of Laws, 1902, § 2476.*

Any estate for the life of another shall be devisable by a will in writing, signed by the party so devising the same, or by some other person in his presence and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands. *Ibid.*, § 2477.

Any widow may bequeath by will the crop or crops standing or growing on the grounds of her dower, or on other lands planted for her use. *Ibid.*, § 2478.

If a will be regularly proved in any foreign court, an exemplification of such will may be admitted to probate in this state upon the exemplification and certificate of the judge of the court of probate; and the exemplification shall also be evidence of the devise of lands in this state where the title of land comes in question: provided, that if the will be not proved in solemn form, the parties interested against the will shall not be concluded by such

probate, but may examine witnesses as to the sanity of the testator, or as to any fraud or imposition practiced upon him in obtaining the will; and the other side may apply for an order to perpetuate testimony in support of the will. *Ibid.*, § 2495.

No nuncupative will shall be good where the estate thereby bequeathed shall exceed the value of fifty dollars, that is not proved by the oaths of three witnesses at the least, who were present at the making thereof, and bid by the testator to bear witness that such was his will, or words to that effect; nor unless such will was made in the last sickness of the deceased, in the house or place where he or she shall die. *Ibid.*, § 2496.

No testimony shall be admitted to prove any nuncupative will, if six months have elapsed after speaking the pretended testamentary words, except such testimony or the substance thereof were committed to writing within six days after the making of the said will, and then twelve months shall be allowed, and no more, for the probate of such will. *Ibid.*, § 2497.

All such witnesses as are and ought to be allowed to be good witnesses upon trial at law by the laws and customs of this state shall be deemed good witnesses to prove any nuncupative will, or anything relating thereunto. *Ibid.*, § 2498.

Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movables, wages, and personal estate, as he or they might have done at common law. *Ibid.*, § 2500.

SOUTH DAKOTA.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must at the time have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear or peril of death; or the decedent must have been at the time in expectation of immediate death from an injury received the same day. *Compiled Laws, South Dakota, 1908, § 1003.*

An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

Every will, other than a nuncupative will, must be in writing, and every will, other than an olographic will and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person, in his presence and by his direction, must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence. *Ibid.*, § 1006.

A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. *Ibid.*, § 1007.

A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. *Ibid.*, § 1008.

The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. *Ibid.*, § 1009.

A will of real or personal property, or both, or a revocation thereof, made out of this state by a person not having his domicile in this state, is as valid when executed according to the law of the place in which the same was made or in which the testator was at the time domiciled, as if it were made in this state and according to the provisions of this chapter. *Ibid.*, § 1010.

No will or revocation is valid unless executed either according to the provisions of this chapter or according to the law of the place in which it was made, or in which the testator was at the time domiciled. *Ibid.*, § 1011.

Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place by the law of which such will would be void. *Ibid.*, § 1012.

TENNESSEE.

No last will or testament shall be good or sufficient to convey or give an estate in lands, unless written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least, neither of whom is interested in the devise of said lands. Code of 1896, § 3895.

But a paper writing, appearing to be the will of a deceased person, written by him, having his name subscribed to it, or inserted in some part of it, and found, after his death, among his valuable papers, or lodged in the hands of another for safe-keeping, shall be good and sufficient to give and convey lands, if the handwriting is generally known by his acquaintances, and it is proved by at least three credible witnesses that they verily believe the writing, and every part of it, to be in his hand. *Ibid.*, § 3896.

No nuncupative will shall be good where the estate exceeds two hundred and fifty dollars, unless proved by two disinterested witnesses present at the making thereof, and unless they, or some of them, were especially required to bear witness thereto by the testator himself, and unless it was made in his last sickness, in his own habitation or dwelling house, or where he had been previously residing ten days at least, except he be surprised by sickness on a journey or from home, and dies without returning to his dwelling. *Ibid.*, § 3898.

No nuncupative will shall be proved by the witnesses after six months from the making, unless it were put in writing within ten days; nor shall it be proved till fourteen days after the death of the testator; nor till process has issued to call in the widow or next of kin, or both, if conveniently to be found, to contest it. *Ibid.*, § 3899.

No written will shall be revoked or altered by a subsequent nuncupative will, except the same be in the lifetime of the testator reduced to writing and read over to him and approved; and unless the same be proved to have been so done by the oaths of two witnesses at least, who shall be such as are admissible upon trials at common law. *Ibid.*, § 3900.

Wills executed in other states, or in any of the territories, or in the District of Columbia, shall be proved according to the laws of this state, and certified in the manner prescribed by the act of congress. *Ibid.*, § 3914.

A copy of a will so certified shall be registered in the county where the land lies, and a copy from the books of the register, duly certified, shall be evidence. *Ibid.*, § 3915.

And where the last will and testament of any person deceased is proved in a court of any state or territory of the United States, or before the mayor of any city, any person interested may present a copy thereof, duly authenticated, to the county court of any county in the state where the land or estate devised or disposed of by the will is situated; and thereupon such court may order the same to be filed and recorded, and said copy, when so

recorded, shall have the same force and effect as if the original had been executed in this state, and proved and allowed in the courts of this state. *Ibid.*, § 3916.

And said will, if proved according to the laws of this state as to wills made and executed within the limits of this state, shall be sufficient to pass lands and other estate. *Ibid.*, § 3917.

In those cases where the will is proved before a court of any other state or territory, the copy shall be authenticated in the manner prescribed by the act of congress of 1790, session (section) 2, chapter 11, for authenticating the records and judicial acts of any one state in order to give them validity in any other state. *Ibid.*, § 3918.

And where the same is proved before the mayor of any city or corporation, the authentication shall be under the hand of the mayor and the seal of the city or corporation. *Ibid.*, § 3919.

Such copy so authenticated, or a copy thereof, when recorded, certified by the clerk of the court in this state where the same is recorded, shall be evidence. *Ibid.*, § 3920.

Any last will of any person in the military or naval service of the United States, made in a foreign country, or at sea while in such service, may be admitted to probate by the county court of the county where the testator was domiciled, upon the certificate of the colonel, lieutenant-colonel, major, or commanding officer of the regiment, or captain or commandant of the vessel, setting forth that the testator acknowledged, or that the subscribing witnesses proved, the will before him. *Ibid.*, § 3920.

TEXAS.

Every last will and testament except where otherwise provided by law shall be in writing and signed by the testator or by some other person by his direction, and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in the presence of the testator. Civil Statutes, 1897, art. 5335.

Where the will is wholly written by the testator the attestation of the subscribing witnesses, as required in the preceding article, may be dispensed with. *Ibid.*, art. 5336.

Any person who is competent to make a last will and testament under article 5333, may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed. Art. 5338.

No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his habitation or where he has resided for ten days next preceding, except where the deceased is taken sick from home and dies before he returns to such habitation, nor where the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will or words of like import. *Ibid.*, art. 5339.

No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, and there had been no will, summoned to contest the same, if they desire to do so. *Ibid.*, art. 5340.

After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will unless the testimony or substance thereof shall have been committed to writing within six days after making the will. *Ibid.*, art. 5341.

Any soldier in actual military service, or any marine or seaman being at sea may dispose of his chattels without regard to the provisions of this title. *Ibid.*, art. 5342.

UTAH.

Every will, other than a nuncupative will, must be in writing, and every will other than an olographic or a nuncupative will must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself.
2. The subscription must be made in the presence of the attesting witnesses.
3. The testator must at the time of subscribing the same declare to the attesting witnesses that the instrument is his will; and
4. There must be two attesting witnesses, each of whom must sign his name as a witness to the end of the will, at the testator's request, in his presence and in the presence of the other. Compiled Laws, 1907, § 2735.

An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed. Such wills may be proved in the same manner as other private writings. *Ibid.*, § 2736.

A will of real or personal property, or both, as a revocation thereof, made out of this state by a person not having his domicile in this state, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state and according to the provisions of this chapter. *Ibid.*, § 2744.

A nuncupative will is not required to be in writing nor to be declared or attested with any formalities. *Ibid.*, § 2746.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of \$1,000;
2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will or to that effect;
3. The decedent must have been at that time in expectation of immediate death from an injury or casualty happening or occurring within twenty-four hours previous to the making of such nuncupative will. *Ibid.*, § 2747.

No proof must be received of any nuncupative will unless it is offered within six months after speaking the testamentary words, nor unless the words or the substance thereof were reduced to writing within thirty days after they were spoken. *Ibid.*, § 2748.

VERMONT.

No will, except such nuncupative wills as are hereinafter mentioned, shall pass any estate, real or personal, or charge or affect the same, unless it is in writing and signed by the testator, or by the testator's name written by some other person, in his presence and by his express direction, and attested and subscribed by three or more credible witnesses, in the presence of the testator and of each other. Public Statutes, 1906, § 2734.

No nuncupative will shall pass personal estate when the estate thereby bequeathed exceeds the value of two hundred dollars; nor shall a nuncupative will be proved and allowed, unless a memorandum thereof is made in writing, by a person present at the time of making such will, within six days from the making of it; nor unless it is presented for probate within six months from the death of the testator. *Ibid.*, § 2735.

This chapter shall not prevent a soldier, in actual military service, or a mariner or seaman at sea, from disposing of his wages or other personal estate as he might otherwise have done. *Ibid.*, § 2736.

VIRGINIA.

No will shall be valid unless it be in writing and signed by the testator or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly by the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. Code of 1904, § 2514.

Notwithstanding the two preceding sections, a soldier being in actual military service, or a mariner, seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this state at the time of his death shall be valid as to personal property in this state, if it be executed according to the law of the state or country in which he was so domiciled. *Ibid.*, § 2516.

Where a will relative to estate within this state has been proved without the same, an authenticated copy thereof, and a certificate of probate thereof, may be offered for probate in this state. When such copy is offered, the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicile, and shall admit such copy to probate as a will of personalty in this state. And if it appear from such copy that the will was proved to be a valid will of lands in this state by the law thereof, such copy may be admitted to probate as a will of real estate. *Ibid.*, § 2536.

WASHINGTON.

Every will shall be in writing signed by the testator or testatrix or be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator. *Annotated Codes and Statutes, 1909, § 1320.*

Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name as a witness to such will and state that he subscribed the testator's name at his request. *Ibid.*, § 1321.

No will in writing, except in cases hereinafter mentioned nor any part thereof shall be revoked except by a subsequent will in writing or by removing, canceling, tearing, or obliterating by the testator or testatrix or in his presence or by his or her consent or direction. *Ibid.*, § 1322.

No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator at the time of pronouncing the same did bid some person present to bear witness that such was his will, or to that effect and such nuncupative will was made at the time of the last sickness and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return. Nothing herein contained shall prevent any mariner at sea or soldier in the military service from disposing of his wages or other personal property by nuncupative will. *Ibid.*, § 1330.

No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words or the substance thereof be first committed to writing and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper. *Ibid.*, § 1331.

WEST VIRGINIA.

No will shall be valid unless it be in writing and signed by the testator or by some other person in his presence and by his direction in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly written by the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, and of each other, but no form of attestation shall be necessary. *Code of 1906, § 3135.*

Notwithstanding the two preceding sections, a soldier being in actual military service or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled

out of this state at the time of his death shall be valid as to all personal property in this state, if it be executed according to the law of the state or country in which he was so domiciled. *Ibid.*, § 3137.

Where a will relative to estate within this state has been proved without the same, an authenticated copy and the certificate of probate thereof, may be offered for probate in this state. When such copy is so offered the court to which, or the clerk to whom, it is offered, shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicile, and shall admit such copy to probate as a will of personalty in this state; and if it appear from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of land in this state by the law thereof, such copy may be admitted to probate as a will of real estate. But any person interested, may, within five years from the time such authenticated copy is admitted to record, upon reasonable notice to the parties interested, have the order admitting the same set aside, upon due and satisfactory proof that such authenticated copy was not a true copy of such will, or that the probate of such will has been set aside by the court by which it was admitted to probate, or that such probate was improperly made. *Ibid.*, § 3157.

WISCONSIN.

No will made within this state since the first day of January, 1896, except such nuncupative wills as are mentioned in this chapter, shall be effectual to pass any estate, whether real or personal, or to charge or in any way affect the same unless it be in writing and signed by the testator or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses in the presence of each other; if the witnesses are competent at the time of such attesting their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will if it be otherwise satisfactorily proved. Statutes of 1898, § 2282.

A last will and testament executed without this state in the mode prescribed by the law either of the place where executed or of the testator's domicile shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state; provided, said last will and testament is in writing and subscribed by the testator; and provided further, that this section shall not affect such nuncupative wills as are mentioned in this chapter. *Ibid.*, § 2283.

No nuncupative will shall be good when the estate bequeathed shall exceed the value of one hundred and fifty dollars that is not proved by the oath of three witnesses, at least, that were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will or to that effect; nor unless such nuncupative will were made at the time of the last sickness of the deceased and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation. *Ibid.*, § 2292.

After six months shall have passed after speaking any pretended testamentary words no testimony shall be received to prove the same as a nuncupative will unless the said words or the substance thereof were reduced to writing within six days after the same testamentary words were spoken. Nor shall letters testamentary or probate of any nuncupative will be issued

by any county court until fourteen days, at least, after the decease of the testator be fully expired; nor shall any nuncupative will be at any time approved and allowed unless notice shall have first been given to the widow and other persons principally interested, if resident within the state, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier being in actual service nor any mariner being on shipboard from disposing of his wages and other personal estate by a nuncupative will. *Ibid.*, § 2293.

When a will devised lands in this state, or any interest therein, shall have been duly proved and allowed in the proper court of any other of the United States or the territories thereof a copy of such will and of the probate thereof, duly authenticated, may be recorded in the office of the register of deeds of any county in which any such lands are situated, and when so recorded, and all such as may have heretofore been so recorded, shall be as valid and effectual to pass the title to such lands as if such will had been duly proved and allowed by the proper court in this state; and the record of such copy or a duly certified transcript thereof shall be presumptive evidence of the authority of any person authorized by such will to convey or otherwise dispose of any such lands. *Ibid.*, § 2295.

WYOMING.

All wills to be valid must be in writing, or type-written, witnessed by two competent witnesses, and signed by the testator or by some person in his presence and by his express direction, and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will. No subscribing witness to any will can derive any benefit therefrom unless there be two disinterested and competent witnesses to the same, but if without a will such witness would be entitled to any portion of the testator's estate, such witness may still receive such portion to the extent and value of the amount devised, and any type-written wills which may have been executed prior to February sixth, eighteen hundred and ninety-five, shall be admitted to probate notwithstanding the fact that they are type-written, if in all other respects they are legally executed. Revised Statutes, 1899, § 4568.

All wills duly proved and allowed in any other of the United States, or in any foreign country or state, may be allowed and recorded in the district court of any county in which the testator shall have left any estate. *Ibid.*, § 4582.

When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court, judge or commissioner thereof must appoint a time for the hearing; notice whereof must be given as hereinbefore provided for an original petition for the probate of a will. *Ibid.*, § 4583.

If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate in any other of the United States, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this state, it must be admitted to probate, and have the same force and effect as a will first admitted to probate in this state, and letters testamentary or of administration issued thereon. *Ibid.*, § 4584.

When a will of personal property made by a person who resided without this state at the time of the execution thereof or at the time of his death, has been admitted to probate within the foreign country or within the state or territory of the United States where it was executed or where the testator resided at the time of his death, the district court having jurisdiction of the

estate in this state, or the judge thereof in vacation, must upon an application made as prescribed in this chapter, accompanied by a copy of the will and of the foreign letters, if any have been issued, authenticated as prescribed by the act of congress of the United States relating to the authentication of the legislative acts and judicial proceedings of the states and territories of the United States, record the will and foreign letters and issue thereupon ancillary letters testamentary or ancillary letters of administration with the will annexed, as the case may require. *Ibid.*, § 4585.

Nuncupative wills may, at any time within six months after the testamentary words are spoken by the decedent, be admitted to probate, on petition and notice, as provided herein for the probate of other wills. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition. *Ibid.*, § 4598.

The court or judge thereof in vacation must not receive or entertain a petition for the probate of a nuncupative will, until the lapse of ten days from the death of the testator, nor must such petition at any time be acted on until the testamentary words, or their substance is reduced to writing and filed with the petition, nor until the surviving husband or wife (if any) and all other persons resident in the state or county interested in the estate are notified as hereinbefore provided. *Ibid.*, § 4599.

Contests of the probate of nuncupative wills and appointments of executors and administrators of the estate devised thereby must be had, conducted and made as hereinbefore provided in cases of the probate of written wills. *Ibid.*, § 4600.

CHAPTER LXVIII.

WRECKS.

THE term "wreck" applies to property cast upon the land by the sea, but the term cannot be extended to a boat or other property afloat, not appearing to have been cast overboard or lost from a vessel in distress.

In England the right to wrecked property vests in the crown. In the United States, the states have different provisions respecting the protection and disposition of a wreck, whose general features provide for the appointment of officers, whose duty it should be to save and secure the property, appraise the same and keep it in a safe place to await the claim of persons who may thereafter appear to be entitled thereto. There are also statutory provisions as to the advertisement and sale of said wrecked property. In the state of New York, the subject is regulated by the Navigation Law, §§ 80-93, Birdseye, C. & G. Cons. Laws, pp. 3625-3629, and the forms given below will be found useful in other states.

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1711. **Petition to the Court by Officer for Leave to Sell Perishable Wrecked Property.**

Court of _____

| |
|---|
| In the Matter of the Petition of A. B., for leave to sell perishable wrecked property. |
|---|

TO THE COURT OF _____ :

The petition of A. B., of _____, respectfully shows: I am the [*here name the officer*]; as such _____, I took into my possession, on or about the day of _____, in the name of the people of the state, certain wrecked property, described as follows [*here insert description*], found in the _____ in said county of _____, of which no owner or person entitled to the possession has appeared; I have caused the value of said wrecked property to be appraised by disinterested persons, pursuant to statute, and have kept the same in a safe place to answer the claims of the persons entitled thereto, and have published the notice required by statute to be published in such cases, for the time required by statute; said property so saved is perishable property, so as to render the sale thereof expedient; the expenses of the care, preservation, and keeping of said property amount to the sum of _____ dollars, and the reasonable charges for salvage thereon amount to the sum of _____; no previous application has been made for the relief asked for herein.

I, therefore, pray that an order may be made by this court, authorizing such sale, at public auction, at a time and place to be specified in said order, and that the proceeds of such sale, after deducting the expenses allowed by the court, shall be paid to the county treasurer of said county of _____, and his receipt duly given therefor.

Dated _____

A. B.

[*Verification.*]

1712. **Order of Court Directing Sale of Wrecked Property.**

At a Special Term of the _____ Court [of the county of _____], held at _____, on the _____ day of _____, _____.

Present: Hon. _____, Judge.

| |
|---|
| In the Matter of the Petition of A. B., for leave to sell perishable wrecked property. |
|---|

On reading and filing the annexed petition of A. B., dated _____, whereby it appears that said A. B. is [*here name officer*], and as such _____ has taken into his possession and custody in the name of the people of the state, certain wrecked property [*here insert description*], and the court being satisfied that a sale of the property would be most beneficial to the parties interested, now, on motion of O. P., counsel for said petitioner, it is hereby

Ordered, that the said A. B., the officer having custody of the said property, be and he is hereby ordered and directed to sell the said property at public auction at _____, in said county of _____, on the _____ day of _____, at _____ o'clock in the _____ noon of said day, after giving public notice of such sale as

required by law [here give any further necessary directions as to the manner of sale.]

IT IS HEREBY FURTHER ORDERED, that the proceeds of such sale, after deducting the expenses, which are hereby allowed at the sum of dollars, shall be paid by said A. B., to the county treasurer of said county of , and that said treasurer shall duly give his receipt therefor.

1713. Petition by Owner, etc., Claiming Wrecked Property or Proceeds Thereof.

Court of .

| |
|--|
| In the Matter of the Petition of Y. Z. for Delivery [or, payment of the proceeds] of Wrecked Property to Him as the Owner, etc., thereof. |
|--|

TO THE COURT OF THE COUNTY OF :

The petition of Y. Z., respectfully shows: I reside in the town of , in the county of , and state of . I am the owner [or, consignee] [of the cargo] of the vessel named , which said vessel was wrecked at , in said county, on or about the day of , ' . [Said cargo] of said wrecked vessel was found and saved, and taken possession of by [here name officer], on or about the day of , and less than one year since; [or, recite the order directing sale, etc.]; that no previous application has been made by your petitioner for the relief hereby asked for. That I have established my claim to said property as follows [here state facts].

I, therefore, pray that said A. B. may deliver [or, pay] to me, the said wrecked property [or, the proceeds of said wrecked property], on the payment by me of a reasonable salvage and all necessary expenses incurred in the preservation and keeping of said property, and that your petitioner may have such further or other order or relief as may be just or proper in the premises.

Dated the day of , . [Signature.]
 [Verification.]

1714. Order of Court Directing Delivery of Wrecked Property or Payment of Proceeds.

At a Special Term of Court [of county], held at , in , on the day of , .

Present: Hon. , Judge.

| |
|--|
| In the Matter of the Petition of Y. Z. for Delivery [or, payment of the proceeds] of Wrecked Property to Him as the Owner, etc., thereof. |
|--|

On reading and filing the annexed petition of Y. Z., whereby it appears that said Y. Z. is the owner, etc. [of the cargo] of the vessel [here name

vessel]; that said vessel was wrecked at , in the county of , on or about the day of , [and that an order was made for the sale of the said property, as perishable property, and the proceeds thereof paid to the county treasurer of county, as appear in said petition]; and said claim having been established by evidence, and an undertaking having been given and filed by said claimant pursuant to statute, now on motion of O. P., of counsel for said Y. Z., it is hereby ordered that A. B. [*here name the officer*] deliver to said Y. Z., as such owner, etc., the said property [or, the said proceeds of said property], upon payment by him of the reasonable salvage, and all necessary expenses incurred in the preservation of the proceeds of the said property, and a statement of the claims for salvage and expenses shall be presented, in writing, by said A. B. to said claimant, upon the service of a copy of this order upon said A. B.

1715. Undertaking Given by Claimant of Wrecked Property.

[*Title as in Form 1713.*]

WHEREAS, Y. Z., the owner of certain wrecked property [*here insert description*], in the possession of [*here name the officer*], [or, of the proceeds of certain wrecked property, to wit [*here describe the same*], in the possession of the county treasurer of county], is about to make an application to the court of [the county of] , for an order directing that said property be delivered by said . [or, said proceeds be paid by said treasurer to him], now, therefore, we, said Y. Z., of , and R. S., of , do hereby undertake, pursuant to statute, in the sum of dollars, that the said Y. Z. will pay all damages recovered against him, or his representatives, within two years after date hereof, by any person establishing his title as owner of said property [or, proceeds].

Dated the day of , . [Signatures.]

[*Add acknowledgment and approval.*]

1716. Statement of Claims for Salvage of Wrecked Property.

[*Title as in Form 1713.*]

The following is a statement of the reasonable salvage and necessary expenses of the cargo of the vessel, made pursuant to statute in the above entitled matter.

[*Here state in detail the items of these charges.*] [*Signature of officer.*]

Dated day of , .

1717. Petition to Court by Owner for Adjustment of Salvage.

[*Title as in Form 1713.*]

To COURT OF OF .

The petition of L. M. respectfully shows:* I am the owner of the cargo of the vessel [or, was the master or supercargo of the vessel , at the time the same was wrecked] which was wrecked at in the county of , on or about the day of ; † the cargo of said vessel was taken into the possession of the of the county of , on or about the day of , [and said cargo was sold by said , under an order of this court, made the day of , , and the proceeds thereof paid to the county treasurer of said county, on the day of , 18 , and said proceeds of] said cargo is [or, are] now in the possession of such ; that the amount of the reasonable salvage and necessary expenses

of said saved property cannot be adjusted by agreement of the parties; that no previous application has been made for the order or relief asked for herein.

I, therefore, pray that this court will appoint, pursuant to statute, suitable persons as appraisers, to adjust the amount of such salvage and expenses.

Dated the day of , . [Signature.]

[Verification.]

1718. Same, by Claimant.

[As in preceding form to * and from thence as follows:]

I am the claimant under an order of the court of , dated the day of , , a copy of which order is hereto annexed, and have exhibited said order to the said [name of officer], who has presented to me a written statement of salvage and expenses, on the said property [or, the proceeds of said property], but that I have refused to allow such claims. [Proceed as in last form from †.]

[Annex order.]

1719. Order of Court Thereon Appointing Appraisers.

[Caption as in Form 1714.]

Present: Hon. , Judge.

| |
|--|
| <p style="text-align: center;">In the Matter of the Application of L. M. for Appoint- ment of Appraisers to Adjust the Amount of Salvage and Expenses on [or, proceeds of] certain saved property, to wit: [insert descrip- tion].</p> |
|--|

On reading and filing the petition of L. M., dated the day of , 18 , praying for the appointment of appraisers, pursuant to statute, and on motion of O. P., of counsel for said L. M., it is hereby ordered that A. B., C. D., and E. F., three disinterested freeholders of the county of , not inhabitants of of , adjust the amount of salvage and expenses of the saved property [or, on the proceeds of the saved property] in the hands of the [here name the officer], of the county , to wit, the cargo of the vessel [or, the proceeds of the wreck of the], and that said appraisers shall proceed according to the statute in such case made and provided.

1720. Decision of the Appraisers as to the Amount of Salvage.

[Title of proceeding as in last form.]

We, the undersigned, [two of the] appraisers appointed pursuant to statute, by an order of the court of the county of , made in the above entitled proceeding, dated , , and entered in county clerk's office, on the day of , do hereby find and decide as follows:

First. We have taken the oath required by law, which oath is hereto annexed, and have proceeded to ascertain and adjust the amount of the salvage and expenses of saving and keeping said property, and have heard the allegations of the parties, and the testimony of the witnesses who have attended or have been produced by them.

Second. The amount of such salvage is the sum of , and A. F. is entitled to receive the one part thereof, to wit: the sum of

dollars; F. B. is entitled to receive the part thereof, to wit: the sum of dollars, etc., [stating, in like manner, the amount to be paid to each person entitled to share therein.]

Third. The amount of such expenses is the sum of dollars, and the said E. B. is entitled to receive the part thereof, etc., [stating the amount to be paid to each one entitled].

We further report that our fees and expenses as such appraisers amount to the sum of dollars, to wit: for days' attendance of each appraiser, at dollars per day, and dollars for our expenses as such appraisers.

WITNESS our hands at , this day of , .

[Signatures of appraisers.]

[Annex oath of appraisers.]

1721. Notice of Sale of Wrecked Property by Officer, etc.

The wrecked property herein described having been saved more than one year since, and having been taken possession of by the undersigned, the of the county of , and no person having appeared to claim the same [or, the salvage and expenses thereupon not having been paid within three months after the same had been adjusted; or, after an action for the recovery of the said property had been commenced]:

Now, THEREFORE, notice is hereby given, pursuant to statute, that the said property will be sold at public auction, by the undersigned, at [stating place of sale], on the day of , at o'clock in the noon, and the proceeds of said sale, after deducting salvage and expenses, will be paid into the treasury of this state, for the benefit of the parties interested.

The following is the description of the said wrecked property, to wit: [insert description].

Dated , [Signature and title of officer.]

1722. Notice by Officer of Wrecked Property which Has Come into His Possession.

TO ALL PARTIES INTERESTED IN THE VESSEL [here describe it], HER CARGO, APPAREL, FURNITURE, ETC.:

Notice is hereby given pursuant to law that the wrecked property herein-after described, has come into the possession of the undersigned [here name officer], on the day of , to wit: [here insert description of property]. That said wrecked property now is at , and the actual condition thereof is . That the name of the vessel from which said property was taken, or cast ashore, is [or, is unknown], and that the name of the master of the vessel is [or, is unknown], and the name of the supercargo of said vessel is [or, is unknown], and that said vessel now is at , in , and that the actual condition of said vessel now is as follows: [Here insert description as provided in § 92 of the Navigation Law.]

Dated ,

[Signature of officer.]

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